UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case Nos. 08-13555(JMP); 08-01420(JMP)(SIPA)

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In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC., et al.

Debtors.

- -x

In the Matter of:

LEHMAN BROTHERS INC.

Debtor.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

June 24, 2009

10:15 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

HEARING re Debtors' Motion for Authorization to (i) Assume Unexpired Lease of Nonresidential Real Property; and (ii) Assume and Assign Unexpired Leases of Real Property

HEARING re Debtors' Motion to Restructure Certain Loans with Broadway Partners Fund Manager, LLC, et. al.

HEARING re Motion of Unclaimed Property Recovery Service, Inc. for Compelling Payment of Unclaimed Funds by the New York State Comptroller

HEARING re Motion Authorizing Discovery from Barclays Capital, Inc.

HEARING re Motion of Kalaimoku-Kuhio Development Corp for (i)an Order Compelling Payment of Post-Petition Rent and Charges and (ii)Granting Relief from the Automatic Stay

HEARING re Debtors Motion for Establishment of the Deadline for Filing Proofs of Claim, Approval of the Form and Manner of Notice Thereof, and Approval of the Proof of Claim Form

ADVERSARY PROCEEDING:

HEARING re Deutsche Bank AG v. Lehman Brothers Holdings Inc. Motion for Summary Judgment

SECURITIES INVESTOR PROTECTION CORPORATION PROCEEDINGS:

HEARING re Trustee's Application for an Order Pursuant to Section 365(d)(1) of the Bankruptcy Code Further Extending the Time Within Which the Trustee may Assume or Reject Executory Contracts and Certain Unexpired Leases

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: Please be seated. Good morning.

MS. FIFE: Good morning, Your Honor. Lori Fife, Weil Gotshal & Manges on behalf of Lehman Brothers and its affiliated debtors. This morning, Your Honor, we have a full courtroom and a crowded agenda.

THE COURT: I think full is an understatement. I am a little concerned just about health and safety issues when a courtroom is quite as packed as this one is. And for those who are standing near the door, unless you truly expect to be coming to the podium and speaking, there's a more comfortable place to be one flight up in Judge Beatty's courtroom which has full audio. If you're just here to audit, you'll be a lot more comfortable upstairs and everybody else in the courtroom will be more comfortable for those who, in an exercise of civility and good judgment choose to leave. So I'm going to take about three minutes to give people an opportunity to leave who don't really need to be here. And you know who you are. If no one leaves, I will expect that you're somebody who actually has a reason to come to the podium. And if it's just to say me, too or I reserve rights, you should be upstairs, too.

(Pause)

THE COURT: Okay.

MS. FIFE: Also, Your Honor, we've been asked if LBI could proceed before LBHI because I'm told they have a very

short calendar and that may also free up some of the people to leave earlier, if that's okay.

THE COURT: That's fine. We can start with LBI.

MS. FIFE: Okay. Thank you, Your Honor. David Wiltenburg, Hughes Hubbard & Reed for the trustee in the SIPA proceeding. And I appreciate the willingness of counsel and the Court to vary the calendar. This morning, as with adjournments, we have only uncontested matter. It appears as item 8 at page 10 of the agenda. And it is the trustee's application for an order further extending the time to assume or reject executory contracts pursuant to Section 365 of the Bankruptcy Code.

There was one objection received that has been resolved by means of rejection of the contract in question. So the application this morning is unopposed.

Your Honor, as before, the trustee's staff continues to work through the significant project of evaluating executory contracts and contracts continue to be identified that have value either to LBI or to the Holding Company estate. As I say, that process is continuing and we are as we work through rejecting and assuming as appropriate. And accordingly, we would request approval of a further extension of the trustee's time to assume or reject.

THE COURT: There's no objection? It's approved as uncontested.

MR. WILTENBURG: Thank you, Your Honor. And with that, if I may be excused?

THE COURT: You may be. That frees up one spot.

MR. WILTENBURG: Thank you, Your Honor.

MS. FIFE: Okay.

THE COURT: And before Ms. Fife starts, we have any number of people who are participating through CourtCall. I believe most of the people on the line are just listening. To the extent that anybody has a BlackBerry near their speakerphone, please either shut it off or move it away. Also, to the extent that you have an open line, please mute it because we're getting feedback in the courtroom.

Please proceed, Ms. Fife.

MS. FIFE: Thank you, Your Honor. The first matter on the agenda is the debtors' motion for authorization to assume an unexpired lease and to assume and assign an unexpired lease. The assumption was already heard and granted with respect to 85 10th Avenue. With respect to the assumption and assignment, this relates to a lease at 600 Madison. The debtors are seeking to assume and assume that lease to Neuberger Berman. The landlord had asked for additional information with respect to adequate assurance. We have provided that information to the landlord. And as a result, the landlord has consented to the assumption and assignment. I believe that the landlord, who is represented here in court

today, would like to look at the revised order which we have provided or will provide to the landlord. So we need to get him the revised order. But we expect to do that shortly and then submit the revised order to Your Honor by the end of today.

THE COURT: So but for that detail, there are no issues, is that right? Mr. Eckstein, do you want to identify yourself for the record?

MR. ECKSTEIN: Yes, Your Honor. Andrew Eckstein, counsel for 600 Partners Co, LP. That is a correct representation. There was a little confusion as to who the assignee was given that Neuberger Berman was in a state of flux having had its assets sold and the like. We've asked for adequate assurance, took a couple of months to get it. We now know that Neuberger Berman is known as LB Hercules Holdings LLC but we did receive a letter from Lehman's CFO identifying that it has the financial ability to perform and we're, therefore, satisfied. Just would like to see the order.

THE COURT: Okay. Fine. Thank you.

MR. ECKSTEIN: Thank you, Your Honor.

MS. FIFE: Neuberger changed its name in connection with the sale from LBHI. The next matter on the calendar is the debtors' motion to restructure certain loans with Broadway Partners Fund Manager. This was a loan by LBHI to Broadway Partners in approximately the amount of 450 million dollars.

The loan consists of actually two loans, one a bridge A mezzanine loan of 320 million dollars, the other a bridge B mezzanine loan of 137 million dollars. In light of the distressed commercial real estate market that affects these properties, LBHI is seeking to restructure them. And we have agreed to forbear from exercising our rights with respect to these loans until June 2012. We're also agreeing to actually take control of these properties. And we are seeking to make a capital contribution of twenty million dollars in connection with this restructuring.

There were no objections to this motion. The proposed order, however, has been modified to make it clear that LBHI cannot reject its obligations under the agreement so that the obligations will survive any confirmation of a plan and also that the order does not affect any of the rights of any of the senior lenders, the lenders that are senior to these mezzanine loans.

As there are no objections, we would ask the Court to approve the debtors' motion. I believe the creditors' committee would like to make a statement in support of our motion as well, Your Honor.

THE COURT: All right.

MR. O'DONNELL: Your Honor, Dennis O'Donnell, Milbank Tweed Hadley & McCloy on behalf of the creditors' committee. As with all significant real estate transactions, the

committee's real estate subcommittee evaluated this proposed transaction, spent several weeks, actually, doing diligence on it with the debtors' professionals and, for reasons we need not go into detail here, believe that it is in the best interest of the debtors' estates to proceed with the proposed transaction.

THE COURT: Okay. I accept that representation. I took a look at the term sheet which is attached to the motion. It appears to be a complex transaction. It's not obvious to me from having reviewed it exactly what's going on. And I suspect that's probably true for other people who saw this motion and, as a result, there are no objections because nobody understood it.

MS. FIFE: Oh, well, I'm not sure that's good.

THE COURT: I'm only slightly exaggerating. But as I understand it, there are mezzanine pieces. There are underlying properties being divided into different pools of --

MS. FIFE: Pools, right.

THE COURT: -- 1, 2 and 3. I thought twenty million dollars was being advanced by Broadway entities for the benefit of Lehman and that Lehman was going to receive twenty million dollars. But I may have --

MS. FIFE: No. You're right. I was incorrect, Your Honor.

THE COURT: All right. I'm glad I brought that up then because that's actually the correct way the money moved.

MS. FIFE: Yes. You're right.

THE COURT: And I accept that this is a good transaction and I am comforted by the independent diligence of the creditors' committee. It's approved.

MS. FIFE: Thank you, Your Honor. The next motion on the calendar is a motion of Unclaimed Property Recovery Services Inc. This motion was actually heard at the June 3rd hearing. The Court denied the motion. There is a consensual order that we have agreed to with the Unclaimed Property Recovery Services Inc. And that order denies the motion with respect to the Chapter 11 debtors' estates or their nondebtor affiliates provided that the denial is without prejudice to any relief that the UPRS is seeking with respect to LBI and any of the trustee's objections thereto. With that, we have a consensual order and we would ask the Court to approve that order.

THE COURT: It's approved.

MS. FIFE: Thank you, Your Honor. The next motion on the calendar is the debtors' motion authorizing discovery from Barclays Capital. Yeah. I was going to say. This is a motion that's being handled by Jones Day. But before we get to that, if possible, I'm just going to go out of order. There is an adversary proceeding which is listed on page 10, B7, Deutsche Bank v. Lehman Brothers. And this was a motion for summary judgment. The matter has been settled and the parties will be

presenting an order incorporating the terms of the settlement. So this is going to be settled.

THE COURT: Is there a statement to be made by the parties?

MR. DORCHAK: Good morning, Your Honor. Joshua Dorchak from Bingham McCutchen on behalf of Deutsche Bank in this matter. Thank you for giving us a slot today on a busy calendar, Your Honor. My clients -- since the summary judgment motion's been pending and ready for hearing for a while now, our clients just wanted to make sure that we put on the record, once and for all, that there was a settlement agreed to in principal. The debtors' are going to return the funds that were mistakenly transferred with any accruals thereon. And we're going to finish up the stipulation and get it to Your Honor as soon as possible.

THE COURT: Fine.

MR. DORCHAK: Thank you.

MR. GAFFEY: Good morning, Your Honor. I'm Robert Gaffey from Jones Day. We're special counsel to Lehman Brothers Holdings Inc. in connection with the Barclays matter. And I'm here on the debtors' motion to authorize discovery from Barclays Capital.

Your Honor, I'll be brief and only summarize what I think we've shown in our papers which is that the discovery sought by the estate is focused, is necessary and is well

within the ambit of Rule 2004.

As we noted in our papers, shortly after the transaction, Barclays announced that it had shown a gain of approximately 4.2 billion dollars on the acquisition of Lehman. And since that time, certain, we think, fairly significant discrepancies in connection with the sales transaction have presented themselves and warrant further examination. They fall into essentially three, possibly four, different categories. The three categories are the accrual for compensation which found its way into the asset purchase agreement in Section 9.1C which, in that agreement, Barclays agreed to pay in the aggregate.

The second issue is the amount estimated for the Court at the approval hearing with respect to cure amounts that Barclays would assume which was estimated for the Court at 1.5 billion dollars.

The third issue has to do with a transaction that was front and center before the Court at the approval hearing. It was going on at the same time. And that is a repurchase agreement between Barclays and Lehman that took place on September 18, 2008 where the Court was informed that Barclays would essentially be stepping into the shoes of the Fed to take over certain overnight financing to finance the debtor pending closing of the asset purchase agreement.

And the fourth issue which sort of overrides all of

this, Your Honor, is that the debtor needs discovery concerning the negotiations of these various matters in the transaction.

Now, one important reason that the debtor needs to do this by way of discovery is it has no access to really any of the former Lehman employees who were involved in the negotiations, who were involved in putting these numbers together. And a large number of them worked for Barclays at this point and, therefore, they're unavailable for interview, they're unavailable for access and, therefore, discovery is necessary for us to question people about these issues.

The discrepancies that we have pointed out in our papers, let me briefly review what those are. With respect to the compensation accrual, which was put at two billion dollars, and was recorded in a certain financial schedule to which the APA specifically refers, that financial schedule -- it's annexed as Exhibit A to our motion. Barclays -- the Court was told and the board of LBHI understood that Barclays would assume that two billion dollar liability for bonuses to be paid to the transferred Lehman employees. The asset purchase agreement in Section 9.1C says that they shall do it and they'll do it in the aggregate.

Barclays has, at least as far as we've been able to tell, it appears that either the accrual was too high in which case it could well be that the consideration Barclays gave in the transaction was overstated, or Barclays had not met its

obligation under the APA to pay the full two billion dollars. And it's an issue we've been trying to track down with Barclays since Alvarez & Marsal -- Bryan Marsal, the chief restructuring officer of LBHI, wrote to Barclays and asked how much have you paid. We've not been able to determine that amount. Now, obviously, that's information solely available to Barclays.

The reason that that's important is the accruals that we'll put together, the two billion dollar accrual for compensation, and, at least according to the financial schedule, the 2.25 billion dollar accrual for a cure which, by the next morning, was being put at 1.5 billion were critical components of the consideration that Barclays paid in the deal. They paid 250 million cash. They undertook up to four and a quarter billion dollar liabilities. And if these liabilities were not properly calculated or, worse, simply pulled out of thin air, and I'm not saying that was done -- I'm saying we need discovery to find that out -- then the consideration that Barclays paid in the transaction may have been significantly lower than it should have been.

Now where does the repurchase agreement come into this? The repurchase agreement, Your Honor, is an important part of the investigation that we're conducting right now because it appears, at least from some e-mail that we have been able to recover so far, that the repurchase agreement may have been used as a mechanism to move, essentially, fifty billion

dollars to Barclays worth of assets in return for forty-five billion dollars. It was supposed to be overnight financing secured for forty-five million dollars, secured by fifty billion dollars in collateral. In the event and in amendments that were made over the weekend after the sale was approved, that repo was canceled. The fifty billions went to Barclays. And as we've said in our papers, it appears that that may have been a mechanism to give Barclays an undisclosed discount in the sales transaction. And, in particular, I'm referring to Exhibit 9 to our papers. And it's an e-mail from Girard Riley, then at Lehman, to Ian Lowitt, then Lehman's CFO, and Michael Gelband, another senior Lehman executive. And what it said in part was "Defaulting on the repo could be the best as a discount could be taken from the haircut." And at the end of that e-mail, I think, is what is a very important sentence with respect to our application: "Would we rather have that be in the sale price tomorrow?"

Now, as we've outlined in our papers, Your Honor, if it turns out that the repo was used as a mechanism to give a five billion dollar discount to Barclays, that raises disclosure issues and it raises fairness, equivalence and other issues that need to be examined by the estate.

Now we've had no choice but to pursue this by way of an application under Rule 2004 because our attempts to resolve this cooperatively with Barclays have, unfortunately, been

unsuccessful to date. We've met with their counsel. They're not willing to provide to us all of the documents that we've asked for. And we've laid out the documents that we need in Exhibit F to our papers.

They have, in their reply, said that they may be willing to give us some information that's been given to the creditors' committee and some information that, by happenstance, also has been given to the examiner. And I'm happy to get that to the extent it overlaps with the request that we've made. But I think we need to proceed by way of an order, Your Honor, in order to move expeditiously and to ensure the estate gets the information necessary to pursue these discrepancies and to determine whether or not, and I emphasize both sides of that, whether or not the estate has claims that it should assert or other means by which it should revisit the sale order.

That, Your Honor, is essentially a summary of our position in the papers. I'm happy to rest on our papers unless Your Honor has any questions.

THE COURT: I have a couple of questions. To what extent is the discovery that you seek comparable to the discovery that is being undertaken by the examiner in connection with the examiner's pursuit of his undertakings to develop a report which, among other things, is to touch upon the Barclays sale.

MR. GAFFEY: The short answer to that, Your Honor, is I don't know because I don't know what the examiner has asked. I don't know what the examiner's particular requests are although I do understand there's some overlap. I know the examiner is looking at the Barclays transaction as well. I would suggest, though, that it's appropriate for the debtor to look independently at that issue because there may be a different end result and may form a different conclusion about what claims it has an obligation to bring or to decide not to bring.

To the extent Your Honor might be concerned about burden or duplicativeness or overlap here, we have offered to Barclays and would be happy to deal with the examiner, to make sure they don't have to produce things twice. For example, I understand that Barclays may recently have made a production to the examiner although I don't know what's in it because the examiner is bound by a confidentiality order which doesn't allow the examiner to share with the estate what it received.

It would seem to me, at least as a first step toward giving us the 2004 discovery that we want, Barclays can either go through what it's already produced to the examiner and pull out that which is responsive to what I've asked us or give it to us and let us do that job. But that's the way to deal with the efficiency and the burden point that Barclays has raised. I would add -- I would say the same thing with respect to

requests made by the creditors' committee.

THE COURT: Okay. And I have, I guess, a more fundamental question which is where can this lead. Let's just assume for the sake of discussion that you conduct court-authorized 2004 discovery obtained information and discover a smoking gun or some other piece of information that gives you reason to think that Barclays ended up with too good a deal during that week we all remember. Those of us who participated remember it well. But the order approving that transaction was affirmed at the district court level by Judge Cote and was ultimately final by virtue of the disposition of the Second Circuit of the appeal. The appeal is now dismissed. And so, I have a final sale order and so do you. So let's just assume you find something that gives you reason to question whether or not Barclays got too good a deal. Then what?

MR. GAFFEY: I think the answer to that, Your Honor, is with respect to the sale order itself, I think I still have an opportunity although it may not be the mechanism that's required here to come back under Rule 60, Rule 9024 on grounds of either mistake -- for example, if the smoking gun Your Honor refers to shows, as some of our documents appear to indicate, that the two billion dollars was actually the firm wide accrual for comp, not the North American operations. Let's take that as purely a hypothetical. I think I have an opportunity to come back under Rule 60 and revisit the sale order at that

point on the grounds of mistake.

Should a smoking gun indicate grounds of misrepresentation or fraud, I also have that opportunity. And Rule 60 also allows the Court to give relief from the order for any other reason that justifies relief.

Now, with respect to the first two components there, the debtor has a year to do it. That doesn't apply to the third. But it does apply to the first two which goes to the need for expedition and efficiency on the discovery we seek. But I think I can come back, I could come back conceivably and ask the Court to revisit the sale order under Rule 60 as Barclays, by the way, has done twice.

I think we're not restricted to Rule 60 relief, however. There could be claims. There could be claims to be asserted against Barclays. For example, and this is just by way of example, and, again, Your Honor, I emphasize subject to what discovery we get and what facts we see. There could be the imposition of a constructive trust over assets that were given to Barclays that were meant for a particular purpose and not used for such. There could be a claim for conversion on the same grounds. If a tangible fund was given to Barclays in the transaction, again, for an annotated earmarked purpose and it's not used for that purpose, I think, under New York State law, a conversion claim could lie.

There could be breach of fiduciary duty claims. One

of the things we've raised in our papers is that some of the discovery we seek goes to compensation offers made to and compensation subsequently paid to former Lehman executives who were near or in the negotiations to determine whether or not they abided by their duties to the corporation or whether they gave away points they shouldn't have given away concerned more about their own financial wherewithal.

Again, Your Honor, I emphasize we are just looking at what the possibilities could be and what the early indications are. But I think if I have a breach of fiduciary duty claim, I could look to Barclays for an aiding and abetting claim. I think -- in other words, Your Honor, I don't think the sale order, with respect to independent claims that could be assertive in a complaint is the be all and the end all of that. I think there may a breach of contract claim under the asset purchase agreement.

Now, Barclays have said in their opposition that they have no obligation to pay two billion dollars. That's just not what the contract says. The contract is mandatory. The contract says they shall pay it.

So it's a fair question, Your Honor, most absolutely, and it's one that I gave a lot of thought to as we proceeded down the Rule 2004 path. Again, at the risk of repetitive, I don't want what I'm saying today to be an announcement that we have such claims. I want it to be an announcement that we need

to take discovery to make a responsible determination as to whether (a) the estate has them and (b) should proceed with those claims.

THE COURT: All right. Thank you.

MR. GAFFEY: Thank you, Your Honor.

THE COURT: I see people coming from two sides. Are you -- do you represent different parties?

MR. HUME: Yes, Your Honor.

MR. DUNN: Yes.

THE COURT: And who do you represent?

MR. DUNN: Westernbank.

THE COURT: And you represent Barclays?

MR. HUME: Correct, Your Honor.

THE COURT: I think Barclays might be the key person to hear from right now.

MR. HUME: Thank you, Your Honor. Hamish Hume from Boies, Schiller & Flexner. I'm here with our managing partner, Jonathan Schiller. I'll be handling the argument today, Your Honor.

Your Honor, in paragraph 1 of their reply, LBHI disclaims that they are undertaking a wholesale attack on the sale order or trying to retrade the deal. I think in the answer you were just given, Your Honor, respectfully, you see that that isn't, in fact, what this discovery is intended to do. This Court found that the sale was undertaken in the best

interest of the estate, that fair consideration was provided, that Barclays made the highest and best offer, paragraphs (i), (k) and (l) of your sale order. In their brief, they say they want discovery as to whether there was adequate consideration, whether there was good faith and whether or not there were conflicts of interest that prevented the transaction from being conducted at arms' length. They want discovery precisely into the issues this Court has already determined and ruled upon by saying that it was a good faith transaction, it was conducted at arms' length and Barclays did make the highest and best bid. The Court should not allow it.

THE COURT: What if they made a huge mistake because of the pressure of time?

MR. HUME: Your Honor --

THE COURT: It's possible that I make mistakes, you know.

MR. HUME: Your Honor, they've given you no reason, none whatsoever, to believe that there might be any kind of mistake. There are two things they keep pointing to. Bonus and cure are completely mischaracterized and do not come close to showing the basis of this kind of wholesale attack.

The bonus payments? First of all, we're going to provide the information showing how much we paid in bonuses. We think they should see what we've provided and then see whether they have anything to say about it. There is an

obligation to pay accrued bonuses. Barclays complied with that obligation. No one has said otherwise. If we hadn't complied, you would have heard about it. We complied. We paid significant amounts in those bonuses and in all of the other compensation. The schedule refers to a comp number of 2.0, two billion. It is obviously an estimate. Every single time anyone came before this Court in those days leading up to the closing and referred to the bonus number or the cure payment number, they used the word "estimate", "approximately", "potential exposure". These were not presented to Your Honor as this is the consideration. No one ever said that. The agreement itself in Section 3.1 of the APA defines consideration as the cash paid, over a billion dollars for the real estate, 250 million in cash, which ended up being deposited with the DTCC and the assumed liabilities which were defined as the liabilities of operating the business going forward. And I can assure you, Your Honor, those liabilities have been assumed. The payment of 10,000 employees, their compensation on a going forward basis, the contractual counterparty payments. The business is operating. The liabilities have been assumed. The consideration has been provided.

THE COURT: I hear you. But you're not really going to the issue of discovery as much as what you're telling me is the good faith of your client in the transaction. This is a

very unusual procedural setting we find ourselves in. I can't recall another instance of a transaction of this magnitude being questioned in this manner nine months after the transaction was approved by highly motivated special counsel because it's obvious that Weil Gotshal can't do this. And what I'm being told, it's not that there's anything out there that Barclays needs to be concerned about so much as we just have some concerns on behalf of the estate based upon some representations that have been made publicly by Barclays concerning what appears to be a two billion dollar benefit, accounting benefit, associated with the acquisition in a 2008 Barclays earnings report. I looked at that.

I don't think that anybody at Jones Day is saying that there are claims. In fact, counsel was very clear in saying I'm not saying there are claims. All he's saying is we want an opportunity to investigate whether there might be claims. What's wrong with that?

MR. HUME: Your Honor, it's a question of what's justified in light of that representation and how much they've shown as to what those potential claims may be. Remember, Your Honor -- I mean, the issue before the Court, we submit, is, is the full scope of what they request even remotely justified? We have argued that none of it is justified. But we've already offered to produce the information showing how much was paid in bonus, the information showing how much was paid in cure

payments. They say that they need more than that. And the argument they made in their papers and to you today was we don't have access to the Lehman people. And they want to understand how the estimates came about to the extent there may be a discrepancy between the estimate and the actual number paid. That has nothing to do with the twenty document requests they asked for which, I think, should fairly be understood by the Court to be every single document having anything to do with Lehman at Barclays. Anything. It covers everything including every single compensation agreement, bonus paid to any of those 10,000 employees. They want it all. Every e-mail, every negotiation with any mid-level manager who might be important to a business. Hey, why did you send him? How did you keep him at Lehman? How did you prevent him to go to another firm? They want it all. It's exceptionally broad, it's hugely intrusive and it's not justified. If they want the aggregate number, fine. We'll give it to them. If they think there's a basis to come back for more, we'll talk about it but we don't think there is. If they need to speak to a couple of Lehman employees, we can arrange that. We were offering to arrange those things when they ran to court. We do need a protective order. We think that this bonus information is confidential.

But their thesis in their reply brief is that something's amiss because the estimates generated by their

client originally, or Weil Gotshal's client before the transaction, those estimates seem off in light of what was actually paid. That's the thesis of why they think there's something to investigate.

Their reply brief demonstrates they have all the documents from Lehman Brothers from before the deal. They don't need Barclays' documents. There's no need for any document discovery to explore what they're saying they want to explore. They may need to speak to the people involved who generated those estimates. We don't think there's any basis for it. I want to be clear about that. But, at most, that would be what we think they could argue they may be justified to.

And, Your Honor, all of this talk that they have in their brief and today again about confusion on the repo, respectfully submitted, it's just simply not credible. The Weil Gotshal lawyers were involved in the repo. They submitted to Your Honor the schedule of securities that were in the collateral that were going to be transferred to Barclays in the repo. It was not a gratuitous transfer of five billion dollars. It was a repo in which there was collateral declining by the day precipitously in value that we took in exchange for forty-five billion dollars in cash which they call mere interday financing. It was not mere; it was not interday. Forty-five billion dollars in cash that Barclays fronted and

didn't get back. They got collateral in the form of securities that were plummeting in value. And then it didn't even get all those. And as Your Honor knows, had to come to this Court for a settlement in which it didn't receive the full amount that it was supposed to. And the Federal Reserve, through Shari Leventhal's affidavit, told the Court that she had evaluated the whole thing and thought it was a fair settlement.

None of this is news to the Court. None of this is confusing or should be a source of confusion or allegations that there is --

THE COURT: It's not news but it is confusing. And I think that one of the problems -- I'm just giving you a very candid appraisal. In talking about something that's this massive from the perspective of looking back at it nine months later is that I know from having sat here during that week that it was an extraordinary time in the history of global finance. And things were happening very, very quickly. Very skillful lawyers and businesspeople put together an extraordinary transaction in virtually no time. And it's conceivable that mistakes were made. As has been pointed out by special counsel for the debtors and as you know, Barclays itself sought 60(b) relief on two separate occasions having to do with contracts listed on the list for assumption and the Amex Barclays litigation continues, although I believe it to be close to resolution.

So the notion that there may have been either a misunderstanding or even an innocent misrepresentation as opposed to a willful one is entirely possible. Where it leads is another question. And whether the discovery which is being currently sought is well geared to the objectives of getting to the truth remains to be seen. But we will get to the truth.

MR. HUME: Your Honor, we understand that and we want to cooperate with that and we are cooperating with that. And we have multiple parties with whom we are speaking, you may hear from the creditors' committee in a moment, the examiner's present to a question Your Honor asked counsel for LBHI, how much of the discovery sought is covered by what the examiner is looking at.

On this point on the repo, I would like to draw the Court's attention to the third bullet point on page 4 of the Court's January, I think, 18th order authorizing the examiner which specifically says one topic for the examiner is the transactions and transfers including but not limited to the pledging or granting of collateral security interest among the debtors pre-Chapter 11 lenders and financial participants including JPMorgan, Bank of America, the Federal Reserve Bank of New York. The repo is clearly covered by that topic is something the examiner is looking at.

We have produced documents, e-mails, spreadsheets, what was exchanged in those tumultuous days, we produced them.

We'll continue to produce them for the examiner. We've scheduled interviews and we've offered to make all of that available to LBHI in a coordinated process.

So there should be no question that, in terms of unraveling all of that complexity, we are cooperating and we can make available what we're giving the examiner and the creditors' committee to LBHI.

The creditors' committee may wish to speak. They chimed in on this motion. Our one point on that, which may save a rebuttal, we met with them in February. We've provided them documents. We talked through all of these discrepancies in the numbers they raise in their papers. We haven't heard back since.

THE COURT: Let me just cut through your argument, if I may, and I understand your position. Is it your position that there should be no order entered authorizing 2004 discovery and instead you should simply be permitted to go about the business of providing informal discovery as you've been doing in the past? Is that your position?

MR. HUME: Your Honor, we think --

THE COURT: Because I think that's what I heard you say.

MR. HUME: That is our position, Your Honor. And we think, at a minimum, Your Honor could stay the motion pending our production of the documents we've offered to produce.

Because we don't think there's any need to order production of anything in excess of that. So yes, that is our position.

THE COURT: All right. Let me hear from the creditors' committee. I know there are others who wish to be heard and then I'll give counsel for LBHI an opportunity for further comment.

MR. DUNNE: Your Honor, may I be heard briefly?

THE COURT: Yes, of course.

MR. DUNNE: It's Dennis Dunne from Milbank Tweed Hadley & McCloy on behalf of the committee. The reason I asked for permission is we're actually not representing the committee in this matter. I'm going to turn it over to my co-counsel, James Tecce in thirty seconds to address the merits.

I rose to address one purely factual issue relating to something we are representing the committee with respect to, which is the examiner. Your Honor had some comments about the scope of the examiner's charge. And we recently were in discussions with the examiner so I was literally looking at the order yesterday. And what it actually says is that -- your order charged the examiner with investigating the transfer of assets from LBHI affiliates, other than LBI, to Barclays. And so the vast bulk of the purchase by Barclays were securities and other assets from LBI. You may remember that the genesis of that was Mr. Bienenstock's concern that his client, which was a nondebtor at this time, may have had assets that were

swept up in some broad language that was given to the examiner to take a look at. But they carved out LBI, which my understanding relates to the bulk of what we're talking about today with respect to 2004. And I just wanted to put that --

THE COURT: Thanks for that clarification.

MR. DUNNE: -- on the record. I'll turn the podium over to my co-counsel.

MR. TECCE: Good morning, Your Honor. James Tecce of Quinn Emmanuel on behalf of the official committee. Your Honor, we filed a joinder in support of the 2004 motion because from our perspective it arrives at a propitious time that is coincident with our own investigation at a point that we've reached in our own investigation that suggests that we do need additional information from Barclays.

If the Court will remember, we first raised this issue in December of 2008 in the context of a settlement that had been reached between the SIPA trustee, Barclays and JPMorgan Chase. And we had identified certain issues that were raised in a factual affidavit that was submitted in connection with that affidavit that we viewed as being inconsistent or worthy of further investigation from our perspective and the sale transaction as we were reviewing the sale transaction, that order proving that settlement was entered on the 22nd of December, Your Honor. And I think what's important, because the charge has been made that we've really done nothing to

follow up with Barclays, just to -- very briefly, and I will be brief Your Honor -- chronicle what we have done with respect to Barclays and what the status of our investigation is with respect to Barclays.

The Court admonished, on the 22nd of December, that the parties should work cooperatively to obtain information, specifically the committee to obtain information from Barclays with respect to its questions concerning the sale transaction. And we were very conscious of the Court's remarks. We did not want it to devolve to motion practice so we worked as hard as we could to work cooperatively with Barclays to get the information that we wanted to conduct our investigation.

So the order was entered on that settlement and that issue was raised at a hearing on the 22nd of December, Your Honor. On the 26th of December, four days later, we sent Barclays our first request, if you will, an informal request for information. The parties had a short meet and confer session in January to discuss that letter. There was a meeting on the 3rd of February that is referenced in Barclays' papers. I disagree with Barclay's characterization of that meeting. It was not the Rosetta stone that answered all of the committee's questions. We actually emerged from that meeting with additional questions. And to that end, seven days later, we sent a revised document request or a revised request of information that reflected the questions that we had from that

meeting in February.

Barclays ultimately did produce documents to us in response to those requests on the 20th of March, that's correct. But when the documents were delivered to us they were in a format that made it almost impossible to decipher them. So a period of negotiation with Barclays started as to the format in which the documents would be produced to us.

And it wasn't until the 28th of May -- the documents consist of a number of schedules because, as Your Honor will recall from the sale transactions, securities -- a number of securities were transferred. As they were presented to us, it was difficult for us to decipher them. During the period of April we actually reached out to Barclays and worked with them, asking them to provide the documents to us electronically and they wouldn't agree to that initially. So we worked with them through different ways to get the documents that would avoid them having to produce them electronically. Ultimately, they did produce them electronically to us on the 28th of May, three weeks ago.

So to say that we haven't followed up with them about the schedules, is really unfair to the extent that number one, they were just produced to us in a way that we can decipher on the 28th of May. And two, we're still reviewing those schedules.

But where we are in our investigation, Your Honor, is

I think we've reached a point where we have additional questions on the basis of the documents that we've received. And the best way for us to proceed is probably what we really need are depositions of certain individuals. We may have some discrete discovery requests but we would like to take depositions. And in an effort to be efficient and an effort to avoid duplications, we're asking to join in the debtor's 2004 motion. They've asked for depositions. They have asked for documents but they have asked for depositions and we would like to attend those depositions and propound questions.

We could have filed our own 2004 motion, Your Honor, at any time. But we didn't do that because going back, at least to April, the debtors served discovery on Barclays and requested depositions. And we think that the most efficient and non-duplicative way for us to proceed is to proceed through the Rule 2004 motion.

Just one other point, Your Honor. Your Honor asked where does this all go? What is the remedy at? Mr. Gaffey discussed some of the issues that the parties were considering and I provide the same caveat that we don't know that there's a claim yet. But I just would note that to the extent that assets were transferred that were not authorized by the sale order, that it may give rise to 549 post-petition transactions that were not authorized by the Court. So that's just one other area that we're investigating. We don't know that it

gives rise to a claim. I provide that same caveat but just to answer Your Honor's question.

THE COURT: Okay. Recognizing that there are caveats throughout the courtroom at this moment, is the committee investigating the same subject matter that the debtor intends to investigate assuming the 2004 request that's before me is approved or are you focusing on different subjects?

MR. TECCE: Well, that's a fair question Your Honor. I think that we are -- from our perspective we're examining the sale order, the assets transferred and the liabilities assume and whether or not the transaction that's consummated is consistent with the transaction that was represented to the Court and to the committee.

THE COURT: Sounds like it's the same thing.

MR. TECCE: There are similarities, Your Honor, but I think that we can work with them to avoid the duplication of effort. Already this process is reflected by that to the extent that the debtors have filed their 2004 motion. To the extent that we have additional questions of Barclays, we have not filed a 2004 motion yet because there's one on file already and we've already avoided the duplication of two 2004 motions.

I think the reply that Barclays filed telegraphs what their answer will be when we ask them for additional information. And that's that we've given you everything you need to know. They said in their reply that the committee

shouldn't have any additional questions because we met with the committee and we answered all their questions and they have no basis to be confused.

I think to the extent that we -- if the Court denies the debtor's motion and we go to Barclays and we ask them for additional information, we may be tasked with having to file our own 2004 motion because we'll be met with the answer you have everything you need, go to the Court and prepare a 2004.

So we've already avoided that duplication already. The debtor's have filed their motion. We can certainly coordinate with them in the conduct of depositions as to what questions and areas we think are important to focus upon. And that coordination has been working to avoid duplication so far already.

THE COURT: Okay.

MR. TECCE: Unless Your Honor has any questions, that concludes my presentation.

THE COURT: I don't.

(Pause)

MR. DUNN: Your Honor, my name is David Dunn. I represent Westernbank of Puerto Rico. I'll be very brief.

My client has 145 million dollar claim arising from a repurchase contract for approximately 450 million. The assets that were to be repurchased were involved in the repo that is being investigated here. And we have issues and concerns about

those transactions; what the classifications were of assets that were transferred; what the consideration was that was paid and how that repo transaction came to be a sale transaction in the period immediately after the time Your Honor --

THE COURT: I'm familiar with this theme. It has been raised at multiple times early in the bankruptcy case.

MR. DUNN: And the point is that all of this discovery is being taken under confidentiality orders. We're happy to participate but we need this information. We are likely to wind up in a dispute over the status of repurchase transaction participants, as Your Honor is aware. And as long as this is going forward, given the stake of our claim, we just ask for the opportunity to be able to participate and have access.

THE COURT: Absolutely not. This is something that was fully vetted during the first probably four months of the bankruptcy case when we had -- I don't have the number off the top of my head -- something like thirty-plus separate requests for 2004 examinations brought by parties similarly situated to your client, all seeking information concerning what happened in respect of particular transactions. None of that 2004 discovery has been authorized. All of it has been subsumed under the investigation which is being conducted currently by the examiner. And to the extent it's not subsumed under that examination, it's subsumed under the examination being

conducted by the committee.

So while I appreciate your remarks, you're not getting any relief from me today, nor are you getting any comfort from me in terms of your reserved rights. They are what they are and they're the same as everybody else's reserved right.

MR. DUNN: Your Honor, I'm not looking to get --

THE COURT: Then why are you talking to me?

MR. DUNN: I was trying to explain what it was I was asking.

THE COURT: But I'm trying to understand what position are you asserting that is different from the positions that have been expressed throughout this case and that have been put to one side, appropriately?

MR. DUNN: I'm not looking for discovery about my specific transaction. I'm looking for the generic categorization discovery of what was transferred and how it was allocated, which I understand is already going to be the subject of this examination. And because this examination has already been initiated, I think my client has an interest and a standing and a right to participate in that. I'm not talking about what happened to my securities. I'm talking about the categorization of securities and the division of consideration between, for example, LBHI and LBI. What made up the transaction, the stock that was in that repo? Not did it

include my stock, I know it included my securities. But what were the components and how was the consideration allocated?

It is my understanding that is already what LBHI is seeking to inquire about and obtain. I think I have an interest in that because it's going to affect the pool from which my client ultimately is going to be entitled to recover.

I don't want to ask about my securities, I want to ask generally about the categorization, the valuation and the consideration that was paid and how it was allocated. Those are the issues I'm interested in that where level one step above what Your Honor has previously rejected.

I think as long as that information is going to be provided, we're willing to sign on to a confidentiality agreement. We have a very serious stake here. This is critical to my client's interests and I think we ought to be entitled to participate at that level. I'm not talking about what happened to my particular securities, which is what I understand Your Honor has previously rejected.

THE COURT: There's absolutely no reason for you to separately participate in discovery that's being initiated, if allowed, by the debtor to revisit a transaction if that transaction is revisited and produces information that ultimately needs to the articulation of causes of action. There'll be plenty of opportunities for you and others in the same position to understand what's going on. This is, as I

have said from the outset, to be a transparent process but it is also to be an orderly and efficient one. And there's no efficiency associated with having particular parties jump on the bandwagon of discovery. That bandwagon has been moved to the side and will remain as a side issue until such time as the examiner finishes his investigation and produces a report and the committee finishes its investigation.

To the extent that you have questions that the committee can answer, I'm sure the committee will be cooperative in responding to any reasonable request that you have. To the extent that after this process has run its course, there is still unanswered questions. No parties in interest, including those of your client, will be adversely affected. You'll have an opportunity to pursue your separate interests either in separate litigation or in separate permitted discovery. But nothing's happening today.

MR. DUNN: Okay, Your Honor. Thank you.

MR. BYMAN: Your Honor, may I approach on behalf of the examiner?

THE COURT: Yes, please. I'd like to hear what the examiner's position is.

(Pause)

MR. BYMAN: Good morning, Your Honor. Robert Byman on behalf of the examiner. We actually did not file anything and don't take a position on this motion because we don't think

it's appropriate for us to have one. But want to make sure that the Court is aware, as I'm sure you had anticipated, that each of the areas that had been discussed that people want to take discovery on are things that we are looking into. We are looking into every one of those factual issues, whether or not we report on them is something that I'm not in a position to say yet because we are still agnostics -- we are still the perfect jury that hasn't tried to form a conclusion. But we are looking into each of those issues. We have already interviewed a number of former LBHI people who are now at Barclays.

I would like to simply state for the record that while the course of production of witness interviews and documentation from Barclays hasn't been as fast as I would have liked it. I'm also not as tall as I would have liked to have become. We have gotten cooperation from Barclays. We've gotten everything we've asked for. We've never gotten a no. So we expect to be able to comment on all of these issues.

By the same token, we haven't taken a position on this because, as Jones Day points out to you, they have a deadline that doesn't apply to us. If they're looking at one-year deadline under Rule 60, we can't assure them that we'll be able to answer their questions by then. So I think that's something that they have to take up with you but I don't want anybody in this room to think that we're not looking into all

of these issues.

THE COURT: And indeed from what I read in the Ernst & Young papers, November 2009 continues to be the target date for your report or do you wish to revise that date?

MR. BYMAN: It is our target. But I will tell you that we expect to talk to you sometime in August when we have a better understanding of what our target is. It's becoming less and less likely that that's possible because of unanticipated delays in production of documents, being able to interview witnesses as quickly as we thought.

THE COURT: So you're telling me it's not going to be November, it'll be some time later than that.

MR. BYMAN: I suspect it will, Your Honor.

THE COURT: All right.

MR. DUNN: Your Honor, just a follow up to this, and today is not the day for this but I suspect we're going to be back in front of you on the scope issue. As Your Honor knows we spent hours and hours carefully calibrating the scope to avoid duplication of efforts and the cost that would go into duplicating those efforts. And what I just heard is that they're exceeding the scope as the order is currently drafted and I suspect that we'll be back in front of Your Honor on an appropriate motion.

THE COURT: I think that's probably a good idea that it be brought sooner rather than later.

MR. DUNN: I agree, Your Honor.

MR. KOBAK: Good morning, Your Honor. James Kobak on behalf of the SIPA trustee. Your Honor, I'll be very brief. My purpose for rising now is because we submitted a statement. We think the issues that are being pursued here are relevant to things that we need to look into for various purposes, including disputes we have with Barclays and the report that we need to prepare. And I think, consistent with the way we've been dealing with some of the other parties in their investigations, all that we would ask is whatever Your Honor order we be permitted to attend depositions, to receive copies of documents and so forth. I think in the long run that will avoid a lot of duplication of effort by us and I would think by Barclays. I don't know if Barclays is willing to agree to that voluntarily or not. But if they're not and if Your Honor does order some production and some discovery, we would hope that we would be permitted to participate in that way rather than having to reduplicate the effort ourselves.

THE COURT: Understood.

MR. KOBAK: Thank you.

MS. SCHINDLER-WILLIAMS: Good morning, Your Honor. Sara Schindler-Williams of Kramer Levin on behalf of the Bank of New York Mellon as indentured trustee for the Main Street bonds. I would just like to highlight a few points, although I'm not -- I understand Your Honor's concerns about the

duplication and the efforts of individual creditors coming in. But the indentured trustee is an unusual position of being the creditor of a debtor that was -- of an entity that was not a debtor at the time of the sale and whose assets, therefore, if they were wrongfully transferred to Barclays would not have done so subject -- would have done so subject to any claims of the indentured trustee.

THE COURT: I remember specifically denying a motion brought by your client requesting 2004 relief. It must have been six months ago.

MS. SCHINDLER-WILLIAMS: Yes, Your Honor. That's right. It was on January 14th and you did give us -- you denied it without prejudice given the pending investigation to the creditors' committee and the examiner. But we just would feel that the current filings of the debtors and the committee highlight that the same concerns of the indentured trustee's own motion that excess assets may have been transferred to the estate in error. And that to the extent discovery is uncovered by the parties that is relevant to the indentured trustee's own discovery requests, now filed November 2008, we would like to share in that.

THE COURT: I understand the request.

MS. SCHINDLER-WILLIAMS: Thank you.

MR. GAFFEY: Robert Gaffey again, Your Honor, for --

THE COURT: Your motion certainly has opened a

Pandora's Box, hasn't it?

MR. GAFFEY: It appears to have, Your Honor, but for good reason. I rise just briefly, Your Honor to address a few points that Barclays has raised. One is, respectfully Your Honor, I think at this point we really do need to proceed under order from the Court. As I said, Barclays has, several times, said they would produce. I still haven't seen what they gave the creditors' committee. I can't get it from the creditors' committee because they've got them tied up in a confidentiality agreement. And if it were produced back in March in whatever form it was produced to Quinn Emmanuel and then later in electronic form, if Barclays wanted to resolve these issues they would have turned that over to me by now.

I think an order will have a good, cleansing effect on how everyone proceeds here. I have no interest in taking any more deposition then I need. If an interview makes sense, we'll do that. But I think it makes sense, especially giving the debtor's timing issues here, to proceed by order rather than by promises of cooperation. Inevitably, I think Your Honor, we will be back, if that's the basis on which we proceed.

Secondly, Your Honor, to the extent there has been a suggestion that we, the debtor, are merely curious about the fact that Barclays declared that gain, it's hardly that. I think we've made the showing in our papers and let me just say

out loud, we have some serious concerns about the discrepancies that have arisen here. If there's a 1.5 billion dollar estimate for cure amounts to be spent by Barclays as part of the consideration paid. And if, as it appears, no more than 200 million and probably less then that has been spent, that's a big difference that needs to be investigated.

If a two billion dollar compensation amount was estimated and put in as a firm number in the agreement and if as it appears, from best we can tell, probably no more than 700 million was spent. That's a huge discrepancy that needs to be pursued.

And the repurchase agreement, Your Honor, is a serious, serious matter. If, as these e-mails indicate, it was used to give an undisclosed discount, that's beyond mere curiosity. That's an issue that we, the debtor, have an obligation to pin down.

Lastly, Your Honor, ask for a moment on the issue of confidentiality. One of the things we noted in our papers is I've been asking since first meeting in an attempt to resolve this with Barclays' counsel, for them to propose a confidentiality agreement that they could agree to. And I did that to try and avoid the, sort of, half-need negotiation of this paragraph and that paragraph. I did not hear back from them. Finally on June 16th I sent a draft and Monday afternoon I had a counterproposal. I think we're going to be able to

work that out but I just wanted to, sort of, put a marker down that one issue that will be important to us.

And I think that goes to the efficiency point that you've heard the debtor address and the creditors' committee address and the SIPA trustee address, is we need to be able to share amongst those three constituencies what Barclays produces. It will do no good if Barclays is able to put us, by dint of separate confidentiality agreements, in different silos. That's a recipe for duplicative discovery. So we may be back to Your Honor, I hope we're not but we may be back to Your Honor asking that a confidentiality order on those terms be entered.

THE COURT: All right.

MR. GAFFEY: Thank you, Your Honor.

THE COURT: Is there anyone else who wishes to be heard at this point?

MR. WAISMAN: Your Honor, purely procedural point. This protective order point is a little ironic. That's the only reason they haven't received what we've offered. They sent us a protective order completely different from the one we have with the examiner. We want to harmonize the protective orders. They changed the designations up so we'd have to redesignate everything.

So if we get a protective order we can proceed. We've cooperated with everyone, just as you've heard with the

examiner. These spreadsheets the creditors' committee couldn't open, we've now sent them to them in native format so they could actually alter them, which is highly unusual, to overcome that formatting issue. So we have cooperated fully, we will continue to do so.

THE COURT: Appreciate that representation of a willingness to be fully cooperative in this effort to discover the truth. I'm going to grant the motion brought by debtors' special counsel for authority to take discovery under Bankruptcy Rule 2004.

I am concerned, however, about some of the things I've heard this morning that suggest that this really may be a revisiting of some of the issues that I had thought had been put to rest, at least pending the completion of the examiner's report relating to the needed individual creditors to know more than they currently know about the status of collateral or know more than they think they currently know about how the sale transaction with Barclays impacted their rights.

As to the discovery that might be initiated by individual creditors, I reiterate points I've made in the past that this is not the time for particularized discovery. Instead, discovery for the benefit of all parties in interest concerning fundamental transactions should be conducted by, as the case may be, the examiner, the creditors' committee, the SIPA trustee and now the debtor in possession itself.

But I am troubled, as I have been in the past, about duplication of effort and inefficiencies associated with doing multiple times what can be most efficiently done once. And so as was the case at the time of the appointment of the examiner, and my direction that parties in interest meet and confer for purposes of developing a workable, informal protocol to coordinate the efforts to uncover the truth.

I believe that a similar meet and confer session would be appropriate in respect of the 2004 discovery to be initiated by the debtor by reason of this new order. I believe that it would be entirely appropriate for the SIPA trustee to be a participant, particularly because as has already been noted on the record today, the LBI assets represent a significant percentage of what was transferred pursuant to the sale order. And I also think it important that the creditors' committee, which has sought to join in the 2004 discovery, coordinate its efforts with the efforts of special counsel for LBHI.

To the extent that there is overlap with what the examiner is already doing, the examiner's counsel should also be part of this process. And to the extent that existing confidentiality agreements and restrictions need to be modified in order to permit the sharing of information with other parties who would agree to be bound by comparable confidentiality restrictions if appropriate, that would be a

way to avoid having to produce, again, material that has already been produced once before.

I suggest that that effort at coordination take place as a priority item between today's date and the date of the next omnibus hearing. And if there is a need for either a status report or guidance from the Court concerning any issues of disagreement that may arise, there'll be an opportunity for discussion on the record at that time.

I'll entertain an appropriate order. We'll move on to the next --

MR. HUME: I beg your pardon --

THE COURT: Did you have an order in there?

MR. GAFFEY: Well, I did Your Honor, but it does not -- it's the form of order -- excuse me, Your Honor. It's the form of order that we proposed as an exhibit to our papers. It does not address the meet and confer requirement Your Honor just described but I think we all understand it.

THE COURT: I think everybody understands what I've just said. And you can make a slight adjustment to the order that you have prepared by incorporating into the order the statements that I've made just now.

MR. GAFFEY: We will do that and we'll submit it when that's finished, Your Honor. Thank you.

THE COURT: Okay.

MR. GAFFEY: May I be excused, Your Honor?

THE COURT: Yes. If there are people who feel that it's a good time to leave because this matter has been addressed, people can leave. We'll take a -- just two minutes of quiet time; I'm not moving.

(Pause)

MR. WAISMAN: Good morning, Your Honor. Shai Waisman, Weil Gotshal & Manges --

THE COURT: Good morning.

MR. WAISMAN: -- for the debtors. Two remaining items on the agenda. The first one being listed as agenda item number 5 on page 4 of the agenda that was filed this morning, the motion of -- I'm going to botch this -- Kalaimoku-Kuhio Development Corp. I understand --

THE COURT: I don't think you did that right.

MR. WAISMAN: I'm certain I did not and I apologize to any that are offended. And I'll gladly take instruction on how to pronounce that appropriately. I understand counsel to the movant is either in the room or standing right behind me.

THE COURT: Why don't you pronounce it?

MR. NEALE: Good morning, Your Honor. David Neale of Levene, Neale, Bender, Rankin & Brill. I believe it's Kalaimoku-Kuhio Development Corporation.

MR. WAISMAN: Not even close.

MR. NEALE: One of the hazards of working in Los Angeles, you do have to learn a little Hawaiian, Your Honor. I

don't think that there's anything particularly controversial or groundbreaking from the legal standpoint about our motion. We are simply seeking compliance with the requirements of Section 365(d)(3). The debtor has been in bankruptcy now for in excess of sixty days. There has been no post-petition rent paid to my client. The evidence before the Court suggests that the debtor is incapable of making any rent payments. There is only, approximately 150,000 dollars or so in the debtors' bank account. The building is nearly empty, soon to be entirely empty. We understand that Nike Town, which is the last remaining tenant in the building, is on its way out. So we are sort of at a loss to understand what the debtor is up to with this property, what the debtor intends to do with this property.

THE COURT: They say they're selling it.

MR. NEALE: Well, they said they might be selling it, Your Honor.

THE COURT: They said they're trying to sell it.

MR. NEALE: Well, they've been trying to sell it for months and months, Your Honor. They've been trying to sell it since before the bankruptcy case was filed. They asked for a continuance without giving any sort of information about what kind of deal they're pursuing, who the buyer might be, whether there is a buyer, whether there's a series of bidders. We don't know anything about what's happening with this property

from the debtor's perspective. The only thing we know, Your Honor, is that at this point my client is financing this estate. At this point it's over 600,000 dollars and in about a week or so it's going to be 800,000 dollars. We have about 400,000 dollars that's owing from a prepetition period. So at this point my client is an involuntary lender to this estate in excess of a million dollars.

Simply saying that we're trying to sell the property, I don't think, excuses compliance with the mandatory language of Section 365(d)(3). It does say in (d)(3) that the debtor shall or the trustee shall comply with the terms of the lease within sixty days following the petition date. As I read the debtors' response, it was some sort of an equitable plea to the Court to say please don't make us comply with the Bankruptcy Code because there might be an upside here.

Well, if that were true there'd never be relief under Section 365(d)(3) because presumably with properties there generally might be an upside somewhere down the road. We don't know whether it could be six months down the road, a year down the road or, you know, two years down the road.

THE COURT: Well, there are different consequences that flow from a failure to make a required payment under 365 (d)(3). Sometimes it can become grounds for a motion to dismiss a case. Sometimes it can become grounds for a motion to convert a case. Sometimes it can become a basis for

financing. Sometimes it can become the basis for an adequate protection claim which is secured. But it isn't necessarily grounds for relief from the automatic stay.

MR. NEALE: I understand that, Your Honor. As our motion is phrased in the alternative, I mean, the basic objective of my client is to get paid. There's really no mystery to that. We've asked for relief from the automatic stay in order to affect what Hawaii law allows to occur in the event of a continued default under this lease. The issue that we have is that there are these outstanding defaults. The motion, in the first instance, seeks an order compelling the payment of the outstanding post-petition rent. Failing that, I'm not sure what the debtor is proposing to us because the debtor can't provide adequate protection of our interest under the lease.

THE COURT: What if the order that you seek said that you'll be paid the rent that you're owed at the time that the building is sold. And if the building isn't sold within a reasonable period of time, you can come back in court.

MR. NEALE: Well, Your Honor, that opens all kinds of issues about what a reasonable time is.

THE COURT: Let's just say, for the sake of discussion, it's six months.

MR. NEALE: Well, Your Honor, then my client has financed this property. My client has its own financing

obligations. This is a property that itself is financed by my client. And to the extent we're not receiving rent; we're being put in a financial bind with our lenders. My client never entered into this lease with the expectation of extending two or three million dollars worth of credit to this tenant.

The issue that we have is if the debtor came in today and said, Your Honor we have a sale that we've negotiated to a five star company who can provide adequate assurance of future performance, it's not a special purpose entity that's not capitalized. It's a real tenant who can takeover our space and takeover the lease obligations, I would agree with Your Honor that that would be a perfectly suitable outcome. And we probably would have agreed to allow that to occur. In fact, there were discussions prior to the hearing today about ways in which we could resolve this motion that would involve a sale of the property.

Unfortunately, there's no one here. There's no one here with a check saying we're ready to buy the property. There's no one on the horizon that's been identified with a check that's ready to buy the property.

THE COURT: In that sense, this is almost a classic single-asset real estate case that's residing within a very large global bankruptcy.

MR. NEALE: That's correct, Your Honor. That's correct. It's a single-asset real estate case with a property

that generates little or no rental income; where the tenant is unable to pay the landlord the rent; where there's only 150,000 dollars of cash in the bank which would not even be sufficient to cure the post-petition defaults. It's not even enough to pay one month's rent. So the question, Your Honor, is what would my client be required to do under those circumstances? We've moved to compel payment of the rent. We've moved for relief from the automatic stay. We've moved to compel assumption or rejection of the lease. Those, to us, are the three most legitimate approaches to dealing with the situation.

So if the Court would compel the payment of rent, that may be a somewhat meaningless act if the debtor doesn't have the cash to do that. We've moved for relief from stay because if they can't pay the rent we'd like to have our remedies. And finally, we've asked that the Court compel them to assume or reject because some time has passed in this case, time has passed prior to the bankruptcy petition being filed where the debtor was marketing the property for sale but no sale was identified. And so we want an outside date. We want to know when our problems come to an end with this tenant. We don't think that's unreasonable under the circumstances.

If the facts were different, if we had something concrete we might be singing a different tune. But as we sit here today, Your Honor, we don't see how there's really any alternative.

THE COURT: Okay.

MR. NEALE: Thank you, Your Honor.

MR. WAISMAN: Your Honor, Shai Waisman again for LB 2080, the debtor in question in this dispute. First of all, just to correct some statements that were made at the beginning of counsel's presentation, there is no evidence in the record, there are statements of counsel as to the status of the property. What the papers make clear is that the debtor, LB 2080, has invested over forty-five million dollars in this property. Given the state of real estate the world over, that's not likely to be dollar for dollar value. But the debtor does believe that there is value to be had in a sale of the ground lease and that that value inures to the benefit of all creditors, not just the landlord.

What has become evident to the debtor, in the course of trying to work with the landlord through this situation, and the parties have spent a great deal of time trying to come to an amicable resolution and avoid a hearing today, is that ultimately it appears the landlord very much would like the building with the improvement and the forty-five million dollars expended by LB 2080. And by way of its motion, and many of the statements made today, it's not willing to and it's not going to accept, and we'll get to the issue of the buyer and the status of the sale in just a moment, but is not going to accept any proposed purchaser here and is going to try as

hard as possible to block any assumption of assign and sale of the lease in order to effect a forfeiture on the debtor to the detriment of all creditors and end up with the building.

And point in fact, the history of the property is that LB 2080 or Lehman was originally the lender on the property. The original owner defaulted and LB -- the loan was transferred to this special purpose entity, LB 2080 which foreclosed and now owns the property. So the current tenant is an SPE and that, of course, will go to if and when we come forward with a motion to assume, assign and sell.

The debtors have told counsel for the objector, in detail, the steps they have taken to market and sell the property, have explained that they are in negotiations with one particular proposed purchaser. And in fact, very late last night, New York time, still early Hawaii time, the debtors received a signed -- an executed purchase agreement by a proposed purchaser who would pay three million dollars for an assignment of the lease.

There is one open issue and the debtors will either be countersigning or working to resolve that issue to see if they can countersign and have a fully executed purchase agreement for the assumption, assignment and sale of the lease to the proposed purchaser. We will, of course, provide the objector with any and all information necessary on adequate assurance. And if we can't resolve that issue we will be back

before Your Honor. But the effect of lifting the automatic stay, which is not warranted under the cases, would be to affect a horrible forfeiture when we have in hand an ability not just to pay the landlord everything he's owed and provide a continuing cash stream in accordance with the original existing lease that he negotiated but an opportunity to provide a meaningful creditor -- a meaningful distribution to the creditors of the estate.

Seeing as that's -- those are the facts and that's where we are given the timing of this hearing, we would simply request, as we did in the papers, that the matter be adjourned until the next omnibus date. And we did, in fact, make that request of the objector for a one-time adjournment which certainly is an accommodation that most provide and they were not willing to. So we would ask the Court to adjourn the matter to the next omnibus date to see if we can reach a conclusion on the sale for the benefit of the estate and all of its creditors.

THE COURT: Okay. This is what I'm going to do here. This is not a situation that calls for relief from the automatic stay, in my view. But it is a situation in which the moving party has made a prime facie case of entitlement to post-petition rent which is mandatory under 365(d)(3); it's not optional. And as I suggested in my comments to movant's counsel earlier there are a variety of consequences that flow

from an inability or failure of a debtor in possession to comply with the requirements of the Bankruptcy Code and this is such a requirement.

However, this is a balancing process in which I accept the representations of debtor's counsel that there is in fact a transaction in prospect which reasonably could be developed to the point of being acceptable between now and July 15th, the next omnibus hearing date. And I say the 15th. I'm not sure if that's the date or if it's some other date in July. Is it the 15th or 16th?

MR. WAISMAN: The 15th, Your Honor. The 15th, correct.

THE COURT: I'm going to grant you request for an adjournment but I'm going to note, for purposes of what happens between now and then, that there needs to be a means developed to satisfy the landlord's claim either consensually as a result of the landlord's consent to a transaction which will result in payment or the debtor's going to have to come up with a means to fund that payment. This is not the only situation in which a special purpose entity in which Lehman had an interest was short of cash and needed funding and some of them aren't special purpose entities. So I'll let you finesse this for one hearing more but that's it.

MR. WAISMAN: Thank you, Your Honor.

MR. NEALE: Could I ask? There is cash that's

available in the bank account right now. I'm wondering if the Court might fashion an order that requires at least some of that cash to be paid to my client by the end of this month in partial satisfaction.

THE COURT: No. An adjournment means an adjournment. It means that relief is not being afforded until July 15. And I've given you some helpful remarks already in terms of some leverage as against the debtor. Why don't you use that and sit down?

MR. NEALE: You have, Your Honor. I just -- my client made sure that I had to ask.

THE COURT: Okay. Well, you've asked and I've rejected it.

MR. NEALE: Thank you, Your Honor. May I be excused, Your Honor?

THE COURT: You may be excused.

(Pause)

MR. WAISMAN: Shai Waisman, again Your Honor, for the debtors. The final matter on the calendar is the debtors' motion pursuant to Section 502(b)(9) of the Bankruptcy Code and Bankruptcy Rule 3003(c)(3) for establishment of the deadline for filing proofs of claim, approval of the form and manner of notice thereof and approval of the proof of claim form.

As is evident, Your Honor, the overwhelming majority of creditors and claims or for the overwhelming majority of

creditors and claims at question in these cases, the debtors have proposed what are ordinary bar date procedures. For one category of claims, the debtors seek to implement procedures that are not ordinary and those relate to derivatives.

As claims based on derivative contracts, and we've heard a lot about the derivatives in these cases so far and likely more to come, as those claims are by no means ordinary the typical procedures for filing proofs of claim simply are not appropriate.

This Court well knows that the relief the debtors seek is far from unprecedented. The debtors simply ask that the procedures be modified as to one narrow category of claims to adjust to the context of these totally extraordinary and unprecedented cases and the issues, in accordance with applicable law and precedent.

To pick up on Your Honor's comment, I think it was the attorney from Western Bank, the court, the debtors; the creditors' committee have worked very hard over these past nine months to affect orderly and efficient administration of these Chapter 11 cases. The procedures proposed, in particular as it relates to derivatives, are simply consistent with the aim that all parties have worked towards, which is the orderly and efficient administration of these cases. And absent a grant of the relief requested, as it relates to derivative questionnaires, we all fear the result.

Just generally, Your Honor, the debtors seek to establish September 1, 2009 at 5 p.m. New York time as the last date and time for each person or entity to file a proof of claim. Bankruptcy Rule 3003(c)(3) provides that the Court shall fix a time within which proofs of claim must be filed in a Chapter 11 case pursuant to Section 501 of the Bankruptcy Code.

The debtors, Your Honor may have noticed, filed their original schedules on several dates in March 2009, exception as to one late debtor, actually LB 2080 which subsequently filed its schedules. And those original schedules were amended about two weeks ago, slightly less then that, on June 15th.

As creditors in these cases had ample time to review the debtor's schedules or will by the time the bar date comes, it is now appropriate to establish a bar date in these cases. The debtors believe that the proposed procedures for filing proofs of claim will provide ample opportunity to prepare and file proofs of claim and are fair and reasonable under these particular circumstances.

Importantly, the debtors anticipate that hundreds of thousands of claims will be filed against their estates. The claims are expected to include claims from creditors with breach of contract claims, tort claims, claims based upon loans, claims based upon bond issuances, wage claims and likely nearly every other form of claim asserted in a typical Chapter

11 case. All of the debtors and all of their creditors would benefit from an efficient claims process.

A claims process that provides the debtors with the basic information to understand and begin to analyze claims and does not result in unnecessary and wasteful claims, discovery, litigation and significant delays in distributions to creditors as a result of the claims resolution process. Such a fair and reasonable claims process is precisely what has been proposed in these cases.

Your Honor, the bar date motion of procedures, in particular the derivatives questionnaire in its original form, all were prepared over a period of well over a month by the debtors working closely with their advisors and with the assistance of the legal and financial advisors to the official committee of unsecured creditors in these Chapter 11 cases. Subsequently, the bar date motion was filed and served, and I believe that occurred on May 26, 2009.

In addition to service of the bar date, numerous publications ran stories about the proposed bar date order. Several law firms sent bulletins to all of their clients regarding the proposed procedures. And a number of banks, indentured trustees and others published or otherwise disseminated descriptions, notices, about the bar date procedures.

In fact, Your Honor, the LBI administrator published

notice of the bar date on its website and included on its website a number of documents purporting to be guarantees issued by the debtors with respect to LBIE claims, which documents the LBIE administrator made available to anybody visiting the website to download.

I highlight this because these guarantees and similar guarantees, in particular, were obtained by parties subsequent to or other than in connection with the original transaction may become an important issue in the claims process. As further evidence of how widespread notice has been provided, we can take notice of a full courtroom, overflow courtrooms and, I believe, several participants on the telephone today.

The original hearing on this bar date motion, as Your Honor knows, was scheduled for June 17, 2009. As I'm sure Your Honor and chambers is well aware, the debtors received a number of formal responses in opposition to the bar date motion before and after the original deadline and also received numerous informal responses and have been in informal conversations with numerous creditors over the last several weeks.

The objections raised a number of issues that included allegations of counsel as to factual matters, particularly as it relates to derivatives and derivative termination procedures.

In order to properly evaluate the formal, informal objections, to talk to counterparties debtors adjourned the

June 17th hearing to today. We spent that time, since the 17th, engaged in conversations with counterparties regarding the issues they raised and carefully considered each and every objection, both from a legal perspective and operationally as it would play out in the bar date process and how it would affect the administration of these cases. And throughout, the aim has been the implementation of a reasonable process, fair and reasonable to the debtors and all parties.

As a result, and as has been reflected on the docket, the debtors made numerous modifications to the bar date order, the bar date notice, the claim form and the derivatives questionnaire. As I mentioned, those modifications were reflected in the reply which the debtors filed and served yesterday together with an affidavit of Gary Mandelblatt (ph.) a managing director of Lehman Brothers Holdings, Inc., which, pursuant to the Court's instruction, was noticed to all parties in a notice of evidentiary hearing that was filed and served on June 22nd.

In addition, through the comments received and informal communications had, the debtors have executed three stipulations that they will hand up to the Court. Those stipulations resolve particular concerns with respect to the bar date and those stipulations are entered into with the Internal Revenue Service, JPMorgan Chase and PIMCO (ph.) resolving most of their disputes although some of their

concerns, outside of what was invited in the stipulation, were memorialized in additional objections that those parties filed.

Since the reply was filed yesterday at noon, in discussions with the creditors' committee the debtors have made a number of additional modifications to the bar date order and the attachments thereto. A complete black line of where we are right now on all of those documents, as compared to what we originally filed, I believe, was delivered to chambers. We have another copy to hand up if Your Honor would like. And was made available at the commencement of the hearing to all of the parties in the courtroom today.

So, with that I think it makes sense to quickly run through the modifications that have been made to the bar date order since the original motion so that we can illustrate where we stand at this moment.

THE COURT: Okay.

MR. WAISMAN: Does Your Honor have a copy or would you like me to hand one up?

THE COURT: I have a lot of material up here. I'm not sure what, in particular, I may be missing.

MR. WAISMAN: If I could approach, Your Honor, I --

THE COURT: Please. Thank you.

MR. ELLENBERG: Your Honor, may I be heard for a minute?

THE COURT: Before we -- before going through this

form of order?

MR. ELLENBERG: Yes, Your Honor, because I'm confused procedurally as to where we are. I understand a request has been made. By the way, Your Honor, for the record, Mark Ellenberg on behalf of Morgan Stanley. A request has been made for an evidentiary hearing. At least two parties have asked that that be adjourned because there's lack of adequate notice. We're --

THE COURT: Multiple parties have --

MR. ELLENBERG: -- we're one of them.

THE COURT: Multiple parties have objected, and I --

MR. ELLENBERG: If this is going to be an evidentiary hearing, then I wonder if we're going to hear evidence or we're just hearing argument. I'm just confused about where we are.

THE COURT: Well, I think you're probably not alone in being a little lost as to precisely where we are. I think all that's happening at this moment, and I'm going to give -- why don't you sit down in front of the bar; that way you'll be able to pop up again and it'll be convenient for you.

I think that all that's happening at this moment is that Mr. Waisman is reviewing certain changes to the procedures that have been developed in discussions with the creditors' committee since the filing midday yesterday of the global response to the various objections and the declaration in support of the relief being sought today. Nothing is happening

yet to deal with the question of what kind of hearing we're having or whether or not we're even going to proceed with an evidentiary hearing today. I'm just getting a status report.

MR. ELLENBERG: Thank you, Your Honor.

THE COURT: That's all that's happening right now. Do I misunderstand what's going on, Mr. Waisman, or do you have more in mind?

MR. WAISMAN: Maybe slightly. I have a little bit more in mind, which is, I was going to take the Court through the order and all of the changes that have been made in response to the objections in consultation with parties and, at the request of the creditors' committee, from the moment we first filed the motion, not limited to the four issues that were reflected from yesterday's accommodation.

THE COURT: Fine. You're going to update me and all other parties in interest as to what we're dealing with today, which may be different from what parties thought they were objecting to when the objection deadline came --

MR. WAISMAN: That is --

THE COURT: -- do I understand this correctly?

MR. WAISMAN: That is correct, Your Honor.

THE COURT: Fine.

MR. WAISMAN: Okay.

THE COURT: So let's just view this, as I said, as a status report in which everybody will be updated as to

precisely what we're dealing with today.

MR. WAISMAN: Your Honor, on the blackline that I've handed up to the Court, as well as the blackline that was handed out to the parties before the commencement of the hearing, the first change appears on page 2. And there we have a -- we pushed back the bar date for one week to accommodate the fact that this hearing is now one week later. And we do, in fact, want to make sure we provide parties-in-interest with at least sixty days' notice of the bar date, ultimately.

The next change would appear on page 4 of the blackline. And this is the carve-out as to entities that do not have to file proofs of claim. Paragraph G there was modified just to add (i) and (ii) to make clear who this applies to.

Paragraph (h) was a modification made at the request of Wilmington Trust as indentured trustee, and to make clear that the reason we have a master list of securities is that we have been in discussions with several indentured trustees who have represented to us that they intend to file proofs of claim on behalf of an entire issuance and, therefore, there's no reason for individual holders to file what would essentially be, at that point, duplicative claims.

And to the extent we've been in those conversations and we have proper representations that those proofs of claim will indeed be filed, we've implemented a process that will

avoid, hopefully avoid, probably hundreds of thousands, if not millions, of proofs of claim.

I turn to page 5. The modifications on page 5, again, relate back to the master list of securities and go to a number of the comments made in objections that people would like a more formalized process by which they have to submit inquiries as to whether their security is or can be listed on the master list of securities and that the debtors have a deadline by which they have to reply to folks so that they indeed know whether or not they have to file a proof of claim. And we set out here a clear process with deadlines and ultimately a date by which the master list of securities, as posted, is final, and no changes will be made. So people do know when they have to, if they have to, file proofs of claim or they're exempt.

In addition, and this is one of the new changes, the first Ordered paragraph subsequent to the larger one on page 5, at the request of the creditors' committee we've inserted an ordered paragraph here that the master list of securities, in its initial form, will be published by no later than tomorrow at noon. In fact, we've represented that we'll endeavor to file it today, but certainly by no later than noon tomorrow so that people can start reviewing it and start submitting their questions. In response to a number of objections, we've made clear that any security listed on the master list of securities

is not a derivative contract and therefore does not have to comply with the derivative procedures; and the final ordered paragraph that a holder of a security that is guarantied by a debtor must file a claim against that debtor, again, just clarifying and consistent with the Bankruptcy Code.

On page 6, we've made clear that proofs of claim must denominate claims in U.S. dollars. And then in the next addition, at the bottom of that page, in response to many, many of the objections that we include a more precise definition of derivative contract, we have revised the definition, included it here. And this is a definition we've come to in our conversations with many of the objectors.

I will note that it's almost impossible to get unanimity of views on this issue, but this definition is one that the debtors believe clearly reflects what are derivative contracts and seems to meet the concerns of many of the parties.

There was one additional modification made last night at the request of the creditors' committee, and that's in romanette -- not romanette -- V in the parentheticals towards the end of that paragraph. And that's to insert a repurchase agreement, that a repurchase agreement would be included in the definition of a derivative contract.

Page 7, quite important here. The changes on page 7 relate to the counterparties to derivative contracts and the

procedures they must follow in filing their claims. And an important, and hopefully very helpful, modification here and one made at the request of many of the parties, which is, we understand the procedures and that this information needs to be submitted, but sixty days it not enough and we need additional time. The compromise there is the debtors will have a bar date that will be subject to this Court's approval, a date, a fixed date, hopefully September 1st, by which all parties must file proofs of claim unless otherwise exempted, and that would include counterparties on derivative contracts.

However, here, the debtors have given derivative counterparties an additional thirty days to upload their information onto the specialized Web site for derivative contracts and, therefore, folks will not have to -- while they'll have to submit their proof of claim by September 1st, will not have to complete the questionnaire and upload it until -- or will have to submit it and upload it before October 1st. So a total of, really, ninety days' worth of notice to comply with the procedures for derivative counterparties.

Page 8, modifications there, clarifying language that if you have a claim against a debtor based on a guaranty of a derivative contract that was not issued by a debtor, you do in fact have to complete both the guaranty questionnaire and the derivative questionnaire, but of course you have the additional -- you're afforded the additional thirty days to

complete the derivative questionnaire.

On page 9, in order to accommodate the numerous international protocols and the general cooperative nature among the various administrators, the debtors do require that such administrators file proofs of claim by September 1st, but they will not need to complete the derivative questionnaire. And those administrators will continue to work through the protocol process in providing information to the debtors and quantifying those claims.

The next paragraph, inserted paragraph, on page 9, the claims process we're all familiar with involves a claims agent that has a publicly attestable Web site where one's proofs of claim are submitted; they're available on the Web site to any member of the public. The general proof of claim Web site here maintained by Epiq Systems will not be any different. Proofs of claim that are filed need to be, as part of the Court's records, publicly available. But due to many of the concerns received from counterparties as to the derivative questionnaire specifically, the derivative questionnaire will be a separate Web site. And as parties upload information, it will not be viewable or accessible other than by the party making the submission and by the debtors and the creditors' committee. So no party will be able to go onto the derivative questionnaire Web site and view the submissions information of another party.

The next paragraph was a point raised in a couple of objections, and which was a good point, and this is to reflect that, under the Bankruptcy Rules and applicable precedent, parties do have an opportunity to amend proofs of claim. And the process should be no different with respect to the derivative questionnaire, which will be part of the questionnaire.

So the modification here is to reflect that parties will make their, and must make their, initial submission by October 1st in compliance with the bar date order but will have an opportunity subsequently to amend and supplement the information. As additional information becomes available to them or they become aware of additional or other information, they will have the opportunity to amend, all consistent with the provisions of the Code and precedent, and subject to the parties' rights to argue whether or not the amendments are in fact appropriate amendments or assertions of new claims, or whatever the kind of lines of demarcation are in the case law.

Again, on bottom on page 9, just clarifying the derivative questionnaire deadline.

Page 10, in the middle, again, along with the additional thirty days to submit the derivative questionnaire and a number of modifications to the derivative questionnaire itself, one of the more important points raised by counterparties in a typical bar date order, and as per the

proposed form of bar date order that this Court has adopted as its proposed form, the order makes clear that parties that do no comply with the bar date order are subject to having their claim expunged, barred for noncompliance.

A number of counterparties here objected on the grounds that, by the addition of the derivatives questionnaire and the requirement to comply, in fact the debtors were employing some form of gotcha and were going to object to derivative claims and seek to expunge them, in whole, based solely upon the failure to submit a document. And first and foremost, I think Your Honor understands the manner in which the debtors and their counsel have been proceeding in these cases. The debtors do not seek to play a game of Gotcha on anybody. The counterparties are required to comply with Your Honor's bar date order, once it's entered, and as to whatever it says. And the debtors will exercise good faith in reviewing submissions and determining whether parties made an effort to comply with Your Honor's order, as they do in every case.

And the ultimate arbiter of whether or not -- assuming, for some reason, the debtors decide to become -- take an aggressive position on claims submitted, the ultimate arbiter of whether or not a party attempted to comply will be Your Honor. And the debtors have a lot of credibility to lose before this Court in bringing objections when parties have made an effort, a real effort, to comply and seeking to expunge

claims on technical grounds.

We, of course, would not be doing that. But in order to assuage concerns and in language that's not found in any other bar date order, at least one that I've seen, we have inserted language here to make clear that we will not seek to expunge claims so long as a creditor substantially -- a derivative creditor or a creditor on a derivative contract, substantially and in good faith, complies with the procedures proposed by the order.

Again, there will ultimately be an order, and whatever it says folks will have to comply. To the extent it contains a derivative questionnaire, we have represented to parties in our conversations, now on the record, and as a concession and to make sure that this concern is properly addressed. We've inserted this language so that no one should have a concern that we are going to be somehow arbitrary and seek to effect a forfeiture on a party for failure to not be in compliance on technical reasons.

THE COURT: I don't have a concern based on this language that you're going to be arbitrary, but, candidly, I have some concern as to whether or not this isn't just an open-ended invitation to endless litigation over whether or not there is or is not substantial good-faith compliance with the procedures. And I don't know how one objectively determines that a failure to comply fits the exception. I'm a little

concerned that it's a desirable saving paragraph but that it may have unintended horrible consequences in terms of case administration.

MR. WAISMAN: Your Honor, the debtors could not agree more and really didn't think this was necessary and thought that what should suffice is the debtors' representation and the fact that the judge, the Court, will ultimately be the arbiter of whether folks complied. But in an effort to assuage the continuing concerns, this was what was proposed. And, of course, in the theme of no good deed, a number of objections have been filed, suggesting that the language proposed, as Your Honor points out, is vague and will lead to additional concerns as to what is substantial and good-faith compliance.

Your Honor, again, our effort to streamline the process and avoid needless discussion of this issue on the record, although I suspect, as the Court points out, that parties will not be satisfied, and of course the debtors share the Court's concern that this is actually, if not an open door to do other (sic) than comply to the best of one's ability in accordance with a Court order, to at least argue later on as to what this language means. And we, of course, leave it to Your Honor's direction on that point.

THE COURT: If it were up to me, I'd cross it out. But, of course, it is up to me, isn't it?

MR. WAISMAN: It is. It is. It is. On page 10,

just a technical change given the week's delay in hearing this matter. We have revised the date by which we will serve the bar date notice from June 24th to July 1st.

Page 12, a change that was necessitated by a number of the objections that pointed out, you know, inartful language, probably, on our part. And the language now comports with the provisions of the Bankruptcy Code, that only parties authorized by the Bankruptcy Code and the Bankruptcy Rules can submit proofs of claim, and parties cannot submit proofs of claim if they are not so authorized by the holder of such claim.

The deletion in the middle -- the next two changes, really, are at the request of the creditors' committee. As Your Honor may be aware, there's a motion to dismiss the Chapter 11 case of PAMI Statler Arms LLC that was pending before this Court. The deletion is to make clear, at the committee's request, that the bar date be permitted to run so that there's a quantification of the claims against PAMI Statler and only thereafter will the case be dismissed, if appropriate.

And, finally, the insertion in -- at the request of the creditors' committee, the debtors have agreed that, from this moment forward through the bar date, any modification provided to a -- or relief from the procedures approved by the Court with respect to the bar date that the debtors enter into

or agree to with a creditor will only be done at the consent of the creditors' committee. And, of course, that's agreeable to us.

Those were the only changes to the order itself. The modifications to the proof-of-claim form are made to reflect the changes in the order.

The next set of modifications to be discussed, really, are on Exhibit C and D, which are the derivative questionnaire and the guaranty questionnaire.

And to the extent parties are noticing strange kind of pagination and margining on the proof of claim, it's solely due to the blackline, and it will not look like that.

Your Honor, picking up with Exhibit C, derivative questionnaire, the additional language at the top of the derivative questionnaire is there to reflect that this is a submission in connection with, and as part of, a proof of claim, and mirrors the language that is found in every proof-of-claim form.

From there, page 2 at the top, Your Honor, the debtors are parties to derivative contracts that were or have been terminated since the commencement date. And there are a number of derivative contracts that in fact have not been terminated. The deletion at the top there is make clear that parties to derivative contracts that have not been terminated need to file a proof of claim for their contingent unliquidated

claim but do not need to comply with the various other provisions of the derivative questionnaire as to calculation of their termination claim and delivery of termination notices. Obviously, those wouldn't apply in those circumstances.

Question 4(a), the changes there really, I think, go to the heart of the overwhelming number of objections that were made as to the questionnaire. First, as to confirmations, the debtors heard from a number of parties that they really are bothered by the request to provide confirmations. The debtors consulted with their operational personnel and others and concluded that they could in fact live without the confirmations. And that has been struck.

And, of course, all of these changes are subject to the fact that this is the information the debtors need to form their baseline analysis of claims and subject to the regular claims resolution process, which could include discovery and litigation where the debtors reserve all rights to seek any and all information, including the information that they've eliminated from the derivative questionnaire.

So, confirmations have been eliminated. And then the debtors tighten the language at the end of that paragraph. It previously had said "and other documents related to the transactions", which, we agree, was probably much more vague and broad than intended and now seeks "agreements", again, other than confirmations to make clear and not give anybody

unnecessary concern, "evidencing the transactions"; again, the documents relating -- the very documents that form the contractual relationship between the parties.

In 4(b), termination notice, the second sentence has been completely struck, relating to conditions to be satisfied, evidence of the conditions to be satisfied. And the debtors clarified that they don't in fact need the original termination notice, because in some instances I'm not sure anyone knows where those are, but at least a copy of the termination notice provided.

4(c), again, a copy of a valuation statement and just, really, clarifying language.

In 4(d), specific transaction-level information that is needed, fixing a typo and making clear what we were referring to with the submission being in Excel.

4(e), the changes in 4(e), I think throughout, are really meant to conform to industry standards and the need to provide reference market-maker quotations. The, kind of, narrative request at the very end there has been completely struck, requesting a description of the methodology used to determine the valuation and how the quotations played into the valuation itself.

Again, the balance, which kind of runs through the rest of page 3, just clarifying that we are looking for, kind of, the industry standard reference market-maker quotations, as

set forth in ISDA.

In 4(f), replacement transaction. To the extent a party went out and replaced the transaction, we do need those confirmations to illustrate that those replacement transactions did in fact take place. But we've eliminated the request for external communications and will rely on the contracts and agreements themselves.

4(g), eliminating the request for supporting documentation as to unpaid amounts.

And 4(h), eliminating some of the requests there as to additional information and clarifying Microsoft Excel.

Those are the changes to the derivative questionnaire. And with those changes, we've gotten down to, kind of, where we believe to be a fair and reasonable request that would enable the debtors to kind of begin to form a baseline understanding of the claims and, from there, decide what actions to take next.

Finally, Your Honor, and very quickly, Exhibit D, the guaranty questionnaire, again, the addition of the language at the top, making clear it's being submitted in connection with a proof of claim.

And, finally, there was a question number 8, which was initially inserted at the request -- surprisingly, at the request of a number of the objectors, or some of the informal comments we received, but also at the request of the creditors'

committee, and that was a certification from parties that they in fact relied on the guaranty for which they're submitting the claim in connection or at the time of the underlying transaction with the nondebtor entity, going back to the early discussion of the LBIE situation.

Given that this was inserted after the initial draft was circulated, the creditors' committee had some concern that perhaps it was too late and that the debtors should endeavor to verify the reliance subsequent to the submission of guaranties. It may be obvious, it may not be obvious, and more questions may need to be asked, but their view was that this is not the time given how far down the road we were. And, as a result, we removed question number 8 last night and no longer have a requirement that folks certify in a specific question that they relied upon the guaranty. Of course, it would be the debtors' view that any submission in connection with a proof of claim submitted under penalty of perjury is done with the utmost veracity and folks would submit guaranties only to the extent that they relied upon them in the underlying transaction.

So those modifications are the ones that were made and reflected in the filing on the docket yesterday and further reflected in the distributions today here in court.

From there, it may be useful to walk through the objection chart attached to the reply to illustrate how the changes we've just run through relate back to the objections

raised.

THE COURT: That may be helpful, but I think Mr. Ellenberg has raised, not only on behalf of his own client but on behalf of a number of other similarly situated parties, a fundamental question as to where we're going today. And I think it's entirely appropriate for you to continue your presentation that ties in the chart to the objections and which demonstrates how you've attempted to satisfy the objections, but it's pretty clear that anybody who is following the case closely has probably had a chance to at least take a look at the attachment and see whether or not their particular objection has been satisfied, and if it hasn't been I'll hear from them.

So I think we'll get to that. I'm not suggesting we shouldn't go there, but I think it's important as a threshold matter, particularly because we're getting close to a time when at least I like to eat lunch, that we understand where we're going today and whether or not we are moving forward with an evidentiary hearing, whether or not issues relating to the evidentiary record are going to be heard another day as a result of objections to the timing and requests for adjournment. And it seems to me that that's an important issue for us to address.

MR. WAISMAN: Your Honor, the debtors are moving forward with their motion to have this Court approve the bar

date procedures that have been proposed. The motion was filed; due notice was provided. Parties had every opportunity to object; many of them did object. Given the lengthy opportunity to object, not one of them elected to submit any evidence in connection with their objection.

Solely in response to the numerous assertions of counsel made in pleadings, the debtors submitted a declaration on a very narrow issue: the procedures -- the background as to derivatives in this case and the procedures for terminating derivative contracts in this case. It is a very narrow issue and submitted solely in reply to the objections. Entirely appropriate.

The declaration has now been in the hands of the objectors for nearly a day. They have -- the witness is --

THE COURT: That wasn't intended to be a laugh line, I suspect.

MR. WAISMAN: In the context of these cases where folks filed objections up to the objection deadline, well through the objection deadline and pretty much every day and every hour past that objection deadline to this point in time, including well into last night, it actually wasn't meant to generate the laughter that it did because, quite seriously, as Your Honor points out, people are laser-focused on this case; they're focused on this issue. They had enough time to sit back, consider their objections and their requests, to draft

them, to get their clients' consent and to submit them, at which time I presume they had plenty of time to review the declaration on a very narrow issue and decide whether or not they wanted to question the witness on any of those issues.

The witness is here. The witness is available for cross-examination. We would rest on the declaration, although we are prepared to proffer the witness's testimony. And it is part and parcel of our motion. And the debtors would seek to go forward on the procedure as proposed and have this Court rule on the motion.

THE COURT: Okay. Let me make a couple of comments in reference to where we are procedurally and then allow other parties to be heard, who may wish to be heard. Ordinarily, the first hearing in a contested matter, under the Local Rules, is not an evidentiary hearing. And on Friday I received word from chambers that the debtor was requesting that this be an evidentiary hearing so that the declaration that you've just referenced and any examination of the declaration could be part of today's hearing.

I was off-site at the time that that request was made and, through my clerk, confirmed that I would permit today's hearing to be an evidentiary hearing provided that notice was given to the world, and most particularly to every party who had objected. That notice generated yet another flurry of objections, not just to the substance of what's being requested

today but to the procedure.

I'm concerned, as I have been throughout this case, about the most basic question of due process: that parties have, under the circumstances of the case, a full and fair opportunity to present their positions and to be heard and, in terms of my role, that I'm fully informed relative to what it is that I need to decide.

The contested matter that relates to the approval of the bar date order has generated more objections than, I think, anything in this case since the original sale hearing. I haven't done the math, but my review of the record demonstrates that, both in terms of substantive objections, procedural objections, me-too objections, reservation-of-right objections, amicus objections, that this particular ordinarily uncontroversial aspect of the case is quite obviously very controversial.

So one of the initial questions that I have, particularly since, Mr. Waisman, you urged that a plain-vanilla matter be adjourned to July 15th rather than be heard today: What is the genuine urgency that everybody be forced to have an evidentiary hearing today when we have another spillover Lehman hearing date on the 29th to accommodate the Aurora funding request? And we have another omnibus hearing on July 15th. And even though my schedule is, as many know, increasingly tight, I have the ability to specially schedule evidentiary

hearings, and I have throughout this case.

So that's a long wind-up to get you to answer the question: Why now?

MR. WAISMAN: Your Honor, I understand, and have heard since the first week and into some very late hours, the Court's concern as to due process. And it is an issue that comes up often in the bankruptcy context. And many litigators are often astounded when they sit through bankruptcy hearings. In the context of this bar date motion where the local rules of this Court already provide that no notice of a bar date motion need be provided and that a bar date motion can be submitted, upon the consent of the creditors' committee, directly to chambers and approved by the judge, we've provided more than that.

The motion was filed. It was served on the entirety of the master service list. It has received much publicity. And the original date for the hearing, the 17th, was adjourned for an additional week to try and advance the ball. So, from our perspective, folks have had more than ample notice, more notice than is required by the rules of this Court, by the bankruptcy rules or by the Bankruptcy Code.

The sole issue is the submission of a declaration on a very narrow issue. First of all, we would think that we could proceed without the declaration because the facts and circumstances of these cases illustrate why the proposed

procedures as to one narrow type of claim are appropriate and necessary.

But that aside, the declaration is submitted in response to the objections that were filed, objections that -- objectors that had every opportunity to submit their own declarations, their own evidence, elected not to, instead made assertions of counsel as to factual matters. And the debtors offer a declaration on those narrow points.

The declaration is not -- cannot serve as the reason to delay the implementation of a bar date and the continued forward progress of these cases. And, I submit, Your Honor very well knows the manner in which things happen in these cases. Any delay as to a declaration which ultimately likely isn't necessary but, if it is, is submitted in response and is very narrow, will lead to full-blown discovery on a bar date motion, which wouldn't be appropriate, but there's no doubt that that's where this will end up.

THE COURT: Let me break in and just mention that, in effect, we define away the problem by talking about this as if it's just a bar date motion. The evidentiary problem, I think, is that the premise underlying the debtors', in my view, reasonable request that there be some extraordinary procedures applicable to proofs of claim relating to derivatives nonetheless, as they used to say on Perry Mason, assumes a fact not in evidence. It assumes that, in fact, the procedures that

you have cobbled together, I'm confident with the utmost of good faith, and having called upon a tremendous amount of skillful and knowledgeable people, in fact represent the right approach under the circumstances.

The fact that there are so many objections that have been generated by this process can lead to a number of possible conclusions on my part, and I'm not going to assume the motivation of the parties who have objected. I assume that parties object in good faith because they're concerned that the procedures that are being proposed are either inappropriate, contrary to law, require a level of effort that's not required under applicable rules, changes the burden.

And so it seems to me that the evidentiary issue that we're talking about is not quite as narrowly drawn as you've just articulated. I actually think that in order for me to give you the order that you want, and I recognize that a tremendous amount of work has gone into adjusting the form of relief to accommodate objections, you also need to demonstrate that extraordinary provisions are appropriate in the case of derivatives and guaranty claims. I'm confident you're right. The problem is, as with most people in the room, I was trained as a lawyer. I didn't spend any of my adult life on Wall Street. I know what a derivative is, I think.

MR. WAISMAN: You're ahead of me.

THE COURT: But in terms of the actual work

associated with the six-step derivatives unwind processes described in the affidavit, and whether or not six steps as opposed to four steps as opposed to ten steps may be the right approach, I don't have good answers. Additionally, what I don't know, because there's no evidence on it, and maybe there's no need for evidence on it, is the burden, if any, which is being imposed on counterparties in having to comply with this questionnaire.

And since I've already indicated that I understand the philosophy that underlies that saving paragraph that you stuck into the order, I think the saving paragraph about substantial compliance is an invitation to gaming the system, and I don't like it. Any procedures that we adopt will be strictly enforced. There'll be no slippery slopes so that the procedures that I want to adopt are the procedures that everybody will comply with. But in order to develop those procedures, I need to be assured that they're right and appropriate and that they balance, under the circumstances of this case, the relative burden.

I'm fully comfortable that under 105 and other applicable provisions, given the unique circumstances of this case, I have the authority to adopt specific procedures relative to derivatives and guaranty claims and to deviate from the standard proof-of-claim form. That's not the issue. The issue is making sure that we do it right and that the right

input has been put into the mix. I recognize that there has been dialogue with the creditors' committee, that, no doubt, you've had dialogue with various aggressive objectors, and that the ultimate order may in fact be, under the circumstances, if not perfect, close to workable.

I have questions whether we can get where we want to get today because the record that I want to have established is more than just the declaration on the six-step process. I want a record in which the debtor proves up the extraordinary nature of the derivatives claims, the million transactions, the ten thousand counterparties, the extraordinary burden on the estate if procedures specially crafted to deal with the problem are not adopted.

The nature of the derivative transactions that we're talking about here, what's involved conventionally in determining breakage associated with such transactions? What are the varying approaches to value? What are the varying approaches to claims articulation? What proof is ordinarily required in connection with presenting such claims? What happens in a nonbankruptcy setting when parties in the market are involved in swap termination or derivative termination or whatever may be the terminated contract? I suspect that it may be possible to analogize, from the free market approach, how parties actually value these things when a party is out of the money and exposed to a claim. But I also expect that there may

be differences when parties are alive and functioning and have multiple transactions. So you can give a little on one in the hope of getting one on another.

Here we're talking about dead Lehman Brothers. This is your one-time shot to maximize your recovery. And it raises questions in my mind as to how counterparties are going to approach this process. I want to know what Lehman's people think about that process and how it can be most efficiently managed, because we're not just talking about a questionnaire; we're talking about the biggest administrative headache in this case. And for that reason, I want to make sure that when I approve the procedures I don't, nine months from now, have a hearing like I had today on the sale hearing in which somebody says we didn't think of something we should have thought of.

So I'm not suggesting for a moment that a tremendous amount of topflight work hasn't gone into where we are right now. I want a record that allows me to comfortably approve those procedures. And I don't think we're going to get it today if all we're doing is cross-examining the witness whose declaration I have. Now, it could happen, and if everybody consents to it we can do it at 2 o'clock, but that means that the parties who have sought an adjournment of today's hearing will all waive their objections. And I'm prepared to have an evidentiary hearing at 2. I'll be here all afternoon. But I'm also prepared to do it another day when everybody who's

involved in this process can give some thought not only to things I've said pretty much off the top of my head but also to things that maybe I didn't think of, and maybe to the things that I did wrong, so that we actually have a record relating to proof of claim procedures as it relates to the derivative and guaranty claims that supports the entry of an order that provides for some extraordinary requirements which I view as appropriate in concept but I need to be assured are appropriate in application.

MR. WAISMAN: Based upon Your Honor's comments, it's clear Your Honor understands many of the issues that the parties have struggled with and that have been of concern to the debtors but not necessarily aired in connection with the original presentation, and that's very much appreciated. Perhaps the best way to proceed would be to adjourn to 2 o'clock, give the debtors an opportunity to consider the Court's comments --

MS. GRANFIELD: Can we just have a --

MR. WAISMAN: Can I consult for a moment?

THE COURT: Do you want to confer?

(Pause)

THE COURT: So what came out of that huddle?

MR. WAISMAN: That I'm overruled as to the request to an adjournment to 2:00. The recommendation here, Your Honor, would be, to the extent Your Honor's offer of the 29th is open,

to adjourn the bar date motion to the 29th and give parties an opportunity to review the blackline to come back in discussion with the debtor as to any remaining points and issues and to be prepared on the 29th to go forward with an evidentiary hearing, at which parties will have an opportunity to examine the witness, should they choose to do so.

But it's very important that it be clear that between now and the 29th this is not an invitation for discovery, that there is a narrow -- perhaps not as narrow as I articulated but a narrow issue, and the witness will be available -- will be testifying as to that issue. If we have discovery, it obviously should not be more than the deposition of the witness proposed. But given the reality of the seventy-eight objections embodying the issues articulated by probably well over a hundred parties, I don't think a deposition really makes sense. I think people will have additional time to prepare their examination of the witness, and we should proceed on the 29th with an evidentiary hearing.

THE COURT: Comments from -- it looks like there are a number of parties who wish to be heard, and this is the time to hear them.

MR. DUNNE: Your Honor, for the record, Dennis Dunne, Milbank, Tweed, Hadley & McCloy, on behalf of the official creditors' committee. We are in support of a limited adjournment on this matter. I'd like to just make two

representations, one's a clarification.

Mr. Waisman alluded to procedures whereby under certain circumstances no notice of a bar date motion need be provided if the committee is in accord with that procedure. We refuse to consent to that convention here because of the complexity and some of the extraordinary provisions. And I just want that to be clear.

The second is, while there has been a tremendous amount of collaboration between the debtors and the creditors' committee on the form of order and language insertions, at the end of the day, the debtors did not garner the committee's support to the current form of order. And it has to do with the savings clause which Your Honor struck. We had issues with it as well, but a different fix than striking it. We can reserve that, and hopefully we'll be on board with the revised form of order by Monday. But I wanted Your Honor to know that we still had one remaining issue that went to the heart of one of the committee's concerns.

THE COURT: I want to be clear on something. I didn't strike that paragraph.

MR. DUNNE: Good to hear.

THE COURT: It's not an order. It's just a proposed order. And what I pointed out was that I believed that the philosophy providing flexibility to parties who don't comply, while admirable, is, I think, a fool's errand. I think that

what we need are procedures that will be rigidly and strictly applied; procedures that will be known to everybody, and you either comply or take the consequences of failing to comply. Complete proof of claim transparency. You file it and you comply, or you're out of luck.

MR. DUNNE: And, Your Honor, we agree with that. We were looking for a different bright-line fix. But we can revisit that on --

THE COURT: And by the way, I'm not trying to negotiate the right outcome, here. I'm telling you that I think, in my broad view of this, procedures that are not absolute, are not procedures.

MR. DUNNE: Thank you, Your Honor.

MS. GRANFIELD: I'm sorry, I'm grabbing the podium from Mr. Ellenberg. Lindsee Granfield of Cleary, Gottlieb, Steen & Hamilton LLP on behalf of Barclays Capital Inc. and Barclays Bank PLC and their affiliates on this objection.

I obviously heard Your Honor's comments. With respect to a proposal to simply adjourn the hearing to the 29th, which I didn't get out my calendar, whether that's next Monday or Tuesday --

THE COURT: It's Monday.

MS. GRANFIELD: -- next Monday, a few things. It's not just the proposed witness, to the extent we're having some full-blown evidentiary hearing. It obviously, as Your Honor

indicated, partly goes to the burden on the objectors with respect to the proposed procedures. And there's seventy-five of them or eighty or them, and don't know -- have no idea standing here right now, how many of them would be proposing to bring a witness to talk about the --

THE COURT: I suspect none of them, because in the end -- and I don't mean to break in -- this is not intended to be an unmanageable hearing. It's intended to be a hearing in which real information is provided to me that I can use to make smart decisions. It's not about posturing; it's not about gamesmanship.

MS. GRANFIELD: Bearing in mind --

THE COURT: It's about understanding fully the nature of the derivatives market so that reasonable procedures can be applied to all, and everyone should be able, not with witnesses, but with bright lawyers who are diligent, figuring out a way that works. The objections in the real world should wither away if people do their work properly.

MS. GRANFIELD: I agree, Your Honor. And I've been trying to be in dialogue for a while about what would work here, and not turn into an unmanageable process. But to the extent that Your Honor's asking for an evidentiary hearing -- or you're not asking for it -- to the extent there has to be one --

THE COURT: The debtors asked for one, and I simply

said sure. If you're going to have it, make it be the hearing I need.

MS. GRANFIELD: Sure. But it's not just going to be a monologue by the debtors' witness as to what his view of the derivative market is and what usually happens when derivative claims are being resolved, as they have been in a number of cases that have had a lot of derivatives without a questionnaire tied to the proof of claim.

Now, so let me split up into two things. Because I think one is, what are we doing if we're going evidentiary hearing-wise? But I actually have a different suggestion which might do away with the need for that. On the evidentiary hearing, I guess, my proposal would be that there be discussion, because there are a lot of parties. I don't speak for anybody else. Many of them joined in an objection that we wrote -- not all of them. Many of them wrote their own. But I don't speak for any of them.

And therefore, in consultation, debtors, creditors' committee, I think there would have to be discussion about what discovery does anybody want. Maybe no one will want discovery. That's going to have to be a question. How many witnesses? Do people want to have witnesses? Is there a date to determine whether you're going to have a witness or not? And if there isn't other resolution that would make an evidentiary hearing not necessary, to come back on the 29th, and if there's still

disputes about how the evidentiary hearing is going to work, bring them to you; or if there's agreement about it, tell you what's going to happen and what people propose.

With respect to a suggestion as to how to try to bridge the gap, the concerns, I think, of at least my objectors, go to things about the questionnaire, which is not gamesmanship, it's not trying to do anything other than say, for a party that's got tens of thousands of derivative trades because Barclays is a big financial institution that had lots of dealing with Lehman that had nothing to do with the sale in September, that an institution like Barclays and many other of the institutions who are objectors that also have potentially hundreds of thousands. And so the debtor talking about two percent of the people, well, I think if you added up all the trades of the people who objected, I think you're going to get way into the percentage of their trades, that there are real issues about the gargantuan effort that would be involved in doing what that questionnaire asked people to do.

So that, ultimately, if it has to be tried, would be part of what would be put before you. And the consequences, Your Honor has said, procedures are going to be the procedures, and at least on the -- if this is tied to the bar date order, it's going to be the procedures for everybody. Of course, we've already heard there are three, maybe, special stipulations that those procedures wouldn't apply to if they

were ever ordered. So they're not going to apply to everybody.

But if we are going to have procedures, what the suggestion was, is you don't have to tie them to the bar date order. I mean, if the outcome that the debtor, the creditors' committee, and other people would like is to have -- to be able to send out a notice of bar date order and get a bar date in the middle of September, October, right now, that could happen; because as I think all the objectors said, no one is objecting to the setting of a bar date. And if the bar date, as Your Honor had said, had been a plain vanilla bar date order, then it would have been done, potentially without notice and that would have been it.

One, the Court, parties, the other alternative, in terms of setting up procedures that all parties could try to get behind in terms of having an efficient and streamlined way to resolve derivative claims, is to have procedures that we would work on right now, so they could be entered definitely before whatever bar date is set, whatever regular bar date is set, to be able to say these are the procedures that are going to apply. And you know, part of the controversy is what's the definition of derivative claims or having a definition that's going to cause a lot of confusion; that, in fact, if you're talking about procedures to resolve claims, you can allow the debtor to decide when people are going into those procedures, who's going into those procedures, so that you could cut out a

lot of what people are very concerned about in terms of saying, if you don't comply, your bar date's going to be disallowed because you didn't do this gargantuan thing in the space of a couple of months.

Those procedures, though, when you're talking about resolving claims, would need -- they're usually a two-way street, not a one-way street. Because both parties, both sides need the information to try to get to resolution, and resolution that's not going to require trials in front of this Court as to the resolution of derivative claims, and to not have derivative claims simply disallowed because we're not going with whatever standard. We too thought the standard didn't really work, because we agree with Your Honor, it would just create a lot of litigation about was the standard met.

We don't think these procedures should be attached to the bar date. The bar date could go forward and all claims could be filed. They've got a lot of work to do on things that aren't derivative claims. But then, have the parties -- we could use the same two-week period that people were talking about in terms of adjournment, potentially, to try to come up with procedures that all people could seek to get behind and obviously have Your Honor order them. And it would be, you've got to comply with the procedures. You've got to comply with the procedures.

Just like any bar date order, people might be able to

come back and say this or that about any procedure, just like they would if they're getting to the end and they say, oh there's some real issue about extending the bar date. But that is what the suggestion had been, to try to carve out all of this in terms of attaching it to a bar date order that, in general, as to the general bar date, nobody has a problem with.

I know this is just a suggestion. And obviously it wasn't taken up by the debtors, and they determined to plow through, and rather than have procedures that would definitely be ordered and have to be complied with by everybody, have a questionnaire that obviously a large group of creditors have real concerns with. So I guess it's two different proposals.

If we're going the, you know, we're going to have discovery, we're going to have a full evidentiary hearing, people are obviously not going to try to be presenting information to Your Honor that doesn't make sense or is just gamesmanship. But we'll go to what are the real burdens, not only that the debtor fears, but that the claimants fear. And if it's a contested evidentiary hearing, people have the right to discovery. People have to determine what they're doing. But there is a way to not have this be tied to the bar date, upset the bar date, make the bar date be extended for a long time.

THE COURT: I hear your point, Ms. Granfield. It's not your motion. It's a nice suggestion. Obviously it wasn't

picked up. And I'm not even sure it's a good suggestion. It's obvious to me that linking the questionnaire to the bar date means that it's coercive is someone fails to file the questionnaire. If someone files a proof of claim and is delinquent in following up with a questionnaire or with required further submissions, the claim is still alive. There's simply been some excusable, perhaps, default. That's not going to work in this Court.

We're going to have an up or down on claims. Whether or not there needs to be some timing relief or extension for cause shown for certain parties who are truly burdened and can show the burden, we can deal with that on a case-by-case basis. What we're going to deal with is the motion that's been presented. And the motion that's been presented is for a bar date that includes, as to derivatives and guarantee claims, certain extra added attractions. And what we're really dealing with is the form of those extras in trying to balance the need of the debtor with the burden on those who have to comply. I think I've heard enough from you.

MS. GRANFIELD: Thank you.

THE COURT: Thank you. You started this, Mr. Ellenberg.

MR. ELLENBERG: If the Court please, Mark Ellenberg, Cadwalader, Wickersham & Taft on behalf of Morgan Stanley. I'm sorry to have started it, Your Honor. Perhaps I can finish it.

I do understand that it's late. Just a couple of things. And I understand, Your Honor, that this is a procedural opportunity for me to speak, not a substantive one, and I will not argue the merits.

However, the Court identified the Perry Mason question as whether it has been demonstrated that extraordinary measures are appropriate with respect to derivatives contracts. And I fully agree that that is a very relevant question for an evidentiary hearing. But I think there's a second one, Your Honor, and that's whether the measures that the debtors are actually offering are the right ones.

I don't think there's much disagreement about the fact that they have a problem. I think the question is whether what they've proposed is really the solution to the problem. Morgan Stanley is a very active trader with Lehman and others, and this is not about gamesmanship. This is about having to do substantial additional work that would not normally be done in a nonbankruptcy termination context, and which is totally unnecessary and will be costly and will distract people who are otherwise doing productive things at Morgan Stanley. And that's why, as Your Honor observed, there have been so many objections, because it's just unreasonable.

Now, Your Honor correctly identified the need for due process, which obviously is the basis of our concern about timing. And certainly an adjournment till Monday is better

than no adjournment. I would think that consistent with notions of due process that if we're having an evidentiary hearing, that would mean that objectors could put on evidence if they so chose. Indeed, one of the problems we had with today is a witness that we might well put on was unavailable to day and would be available on Monday. I would like to have the ability to put on a witness if I see a need to do that.

And I would normally think that an evidentiary hearing would include the ability to have notice of who was going to be a witness and the ability to have discovery. Now, most of all, rules need to be symmetrical. So if we're not going to have discovery, or even perhaps notice of the debtors' witnesses, then certainly the same would be true of us. But I would think that normally there would be notice and there would an opportunity for discovery. But most of all, I would like to reserve the right to put on a witness if I feel it's appropriate.

THE COURT: Your right is reserved.

MR. ELLENBERG: Thank you.

MR. SHIMSHAK: Good afternoon, Your Honor. Steve Shimshak, Paul Weiss, for Citi. We are a derivatives counter party as well. We've objected to the procedures, but I'm not going to comment about that. That portion of the discussion is separate. It seems that we're going in the direct of an evidentiary hearing in the near term.

I wanted to mention another feature of our objection which is a source of concern, and that is the issues surrounding guaranteed obligations by LBHI that do not relate, necessarily, to derivative products. We are the nominee custodian for over 38,000 individuals around the world who bought, on a retail level, Lehman paper that was issued by its Dutch subsidiary, and had the benefit of an LBHI guarantee. And we believe that there are serious issues of both fact and substance on the fairness of the mechanisms concerning guarantee claims that are inherent in the bar date procedures that the debtor has proposed.

So if we are going to have an evidentiary hearing, as the gentleman who proceeded me made clear, we would like the opportunity to present testimony on that score and to develop that aspect of the infirmities of the bar date as well. Thank you, Your Honor.

THE COURT: Okay.

MR. BROZMAN: Good afternoon. Andrew Brozman, Clifford Chance for Calyon, Your Honor. I am going to just raise one additional point. I don't think the Court got an answer to its question of what's the rush. I heard a lot of explanations of what they've been doing and a lot of excuses for giving people enough time to have discussions. But unfortunately, those discussions didn't bear fruit.

And I suggest that if we are going to provide the

Court with a record upon which it should rule, and I agree that it should be an appropriate record, I don't understand why we are going forward on June 29th. I think that there is no apparent rush to this process. If anybody wants to rush, it should be the people who are awaiting their funds. I don't believe that we would be dilatory or do anything other than proceed with alacrity here.

But if we are going to observe the minimum requirements of due process, and given the fact that there is no apparent need for a date today, tomorrow or the next day, I suggest that if we're going to do this: number 1, we pick a reasonable date to provide opportunity both to have further discussions based upon the new revised order; number 2, to understand what it is; and number 3, if there is going to be some deviation from the normal contested matter process, in terms of limiting or restricting discovery, I think at least we should be entitled to a new and full-blown witness statement, so we have some concept of what it is that the witness is going to base his testimony upon. Thank you, Your Honor.

THE COURT: Thank you.

MR. HANDELSMAN: Good afternoon, Your Honor. Lawrence Handelsman, Stroock & Stroock & Lavan. I'll be very brief. I rise only because I'm not sure whether this is a list of those who are reserving their rights to put in evidence. I --

THE COURT: I don't think --

MR. HANDELSMAN: -- an exclusive list. That was my concern.

THE COURT: -- it's neither exclusive nor a list.

MR. HANDELSMAN: Well, just briefly. I also represent a record holder of the Euro medium-term notes that Mr. Shimshak referred to. I do not intend to put on evidence -- a witness, I should say, since my client's in Japan. I would, and I hope we can work something out with the debtor where we can put in a sample document upon consent. And that's all we would have to put into the record in order to make the arguments we think you ought to hear.

THE COURT: Okay.

MR. SZYFER: Your Honor, Claude Szyfer, also from Stroock & Stroock & Lavan, but I represent twenty-three derivative claimants. And I simply rise to echo what Mr. Brozman said, simply because I have clients in Finland, in Germany, in Japan, and I don't see the rush and see why we need to proceed on the 29th. And I'm not saying that I would be able to get clients if I wanted to put them on from such far flung places as Finland and Japan.

THE COURT: Looks like those wishing to be on the list have finished their comments. There probably is no reason for the 29th as opposed to any other day, except there is something to be said for convenience and the fact that it's

another Lehman day. It's a day that was set aside for purposes of dealing with an emergency motion to fund Aurora Bank, and I believe that a hearing is set for 2:00 in the afternoon on the 29th. 2:00 seems too late to start proceedings with respect to the derivative and guarantee claim issues, and I would propose that we hold the date on the 29th; start at 10 a.m. that day. Consistent with Mr. Brozman's remarks, however, it isn't necessarily so that every witness who may need to show up will be available that day. It isn't necessarily so that we will complete the record that day.

Oh. I have another case on at 10 a.m. on Monday. I can't do it at 10 a.m. on Monday. It's another Weil Gotshal case.

MR. WAISMAN: We'll adjourn it.

THE COURT: No, it's extended stay. We can't do it at 10; it has to be at 2. I have a confirmation hearing on the 30th. Regrettably, this is just a busy time. And consistent with Mr. Brozman's request for additional time, if I look later in the month of July, it doesn't get much better. So I think that we should stay at 2:00 on the 29th, recognizing that we might go late. But that's not an invitation to go late.

As far as the process, however. In the best of all worlds, we would not be involved in a contest over something that should be transactionally easy to understand. There should be no issue of fact in dispute as to what's involved in

proving up a derivative claim. It may be that it varies from derivative to derivative, a swaption may be different from a foreign exchange contract. But I suspect there's some overlapping Wall Street approach to this sort of process. So I doubt that if a witness from Morgan Stanley gets on the stand and talks about the process, that somebody from some other securities firm is going to say well, that's not how we do it, we do it differently; or if it's done differently, it's not going to be materially differently.

So, in the interest of efficiency, let's not create a structure that's completely unnecessary. One of the procedural problems that we have here is that there are lots and lots of objectors, and they tend to cluster around certain common themes. One theme is the theme raised by Ms. Granfield on behalf of her client, which is not only is this burdensome, it's simply inappropriate to shift the burden on us.

The debtors' theme is, this is unprecedented. And it's simply going to be impossible for this claim process to be anything other than my worst nightmare, unless we have procedures in place applicable to all parties who have claims of this type; which procedures are not necessarily typical, but which are nonetheless appropriate under the circumstances.

All I'm trying to get the parties to do is to agree that some set of procedures does make sense here, and to see if you can develop a consensus approach to what those procedures

are. To the extent you can't, obviously, I'll decide. Ms. Granfield mentioned something which resonated with me, because it's on my personal wish list. My wish list would be that an ad hoc committee of counterparty representatives were to form without portfolio, because no one's going to authorize you to do anything. But to the extent that you've been active and you represent a major counterparty, you should have an interest for your client to protect, and that you could be, in effect, an information source for the debtor.

The debtor could sit with this self-anointed group -- because I'm not going to appoint you. And you can spend some time in somebody's conference room talking about the issues the way an unbiased committee might talk about the issues. I'm not talking about litigation, I'm talking about designing a solution, recognizing that the solution you design doesn't bind anybody, but might be a recommendation to be made to the Court on Monday. I'm not directing that, but I'm suggesting that. And I think that you might find that you don't have as many disagreements as you think you do.

To the extent that there are major problems that don't go away, I'll see you at 2 o'clock, and the first witness will be the debtors'. And we'll probably take the afternoon with that witness, but that's without prejudice to anybody else's witness. Additionally, in terms of streamlining the process, to the extent that there are aspects of the

derivatives and guarantee claim process from the perspective of counterparties that are of common concern, it might be useful if you could coalesce around a particular authority: someone from a trade association, someone from a particular organization that would be an acceptable witness for all. So that instead of having a dozen witnesses saying the same thing, maybe we could have one witness saying what a dozen other people would say.

My goal is to get to a good result, not to create a monstrosity. That should be everybody's goal. Is there anything more before we break for our late lunch?

MR. WAISMAN: Your Honor, just a point of clarification on the proposed procedures. Given that the debtors' witness is known and has submitted a declaration which -- to clarify the procedures, Your Honor, the debtors' witness is known, has submitted a declaration. Everyone has it. We may need to supplement it to meet some of the concerns or questions Your Honor has --

THE COURT: Right.

MR. WAISMAN: -- but we would expect that any witness that a party is going to present at the hearing on Monday, that the debtors' be advised of the identity of the witness and be presented with a declaration as to that witness' testimony so that it is an equal playing field and that it be done in a time frame that enables the debtors to analyze the submission to the

same extent that parties have the declaration and have had an opportunity to review the debtors' declaration.

THE COURT: It's a reasonable request, although I suspect, given the hour of the day and the number of parties involved and the need for people to figure out who their witnesses may be, that all I can suggest is that you receive the best notice that parties can give you; recognizing that you may not know until Friday afternoon or maybe even by e-mail over the weekend, when somebody is available to testify.

We don't have a lot of time to dedicate to this. I'd like to be really clear on something. I don't think this is a situation in which we are dealing with disputed issues of fact. I think this is a situation in which the parties should be able to, to a very large extent, stipulate as to what the facts are. And part of what I'm looking for is evidence as to the appropriateness of the procedures that have been cobbled together here, and as to the burden on counterparties associated with compliance with these procedures.

Some burden is to be expected. The question is whether or not it's unreasonable under the circumstances. And the ultimate standard, I think, is what happens in the market.

MR. WAISMAN: Just one final clarification. And I appreciate that parties will provide notice of the identity of their witnesses as soon as possible, hopefully on Friday, and if later because of circumstances determine, obviously as soon

as possible, including any declaration; and that neither the debtors' witness nor any other party's witness is subject to deposition over the next few days. We will all be heard by Your Honor on Monday.

THE COURT: We'll see you at 2:00 on Monday.

MR. WAISMAN: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 1:26 p.m.)

I N D E X

R U L I N G S

I N D E X, cont'd

R U L I N G S

DESCRIPTION	PAGE	LINE
Debtors' request for adjournment of Kalaimoku-Kuhio Development Corp.'s motion for order compelling payment of post-petition rent granting relief from automatic stay granted and adjourned to next omnibus hearing date	80	13

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

Lisa Bar-Leib

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